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OFFICE OF THE DISTRICT ATTORNEY  
OF THE COUNTY OF SANTA CLARA  
STATE OF CALIFORNIA

P O L I C Y   A N D   P R O C E D U R E   M A N U A L

LOUIS P. BERGNA  
DISTRICT ATTORNEY

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August 1, 1965

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## PURPOSE

The purpose of the following rules of procedure and policy is to keep and maintain an orderly and efficient law office capable of representing the people of the State of California and the County of Santa Clara in the highest professional tradition.

## DISTRIBUTION

All deputies will receive a copy of this manual and will be responsible for keeping it up to date as they receive revisions and supplements. One copy of the manual will be provided for the Legal Stenographer Section, and one copy will be placed in the Library. All investigators will receive a copy of this manual and one copy will be provided for the Investigator's Stenographer Section. The procedures are designed to achieve proper and uniform administration of justice in all criminal matters handled by this office. All deputies shall report to the Assistant District Attorney any statement that will be of benefit to other deputies for inclusion in this manual.



CHAPTER 1

The first part of the book is devoted to a general introduction to the subject. It discusses the scope and objectives of the study, and outlines the main themes and concepts that will be explored in the following chapters. The author also provides a brief overview of the historical development of the field, and discusses the current state of research and practice.

1.1 Introduction

1.2 Scope and Objectives

CHAPTER 2

The second part of the book is devoted to a detailed discussion of the theoretical foundations of the subject. It begins with a review of the basic concepts and principles, and then proceeds to a more in-depth exploration of the various theories and models that have been developed in the field. The author also discusses the strengths and weaknesses of these theories, and provides a critical analysis of the evidence in support of each. This chapter is intended to provide the reader with a solid understanding of the theoretical underpinnings of the subject, and to prepare them for the more practical applications discussed in the following chapters.

The third part of the book is devoted to a detailed discussion of the practical applications of the subject. It begins with a review of the various methods and techniques that have been developed for the study of the subject, and then proceeds to a more in-depth exploration of the various applications of these methods and techniques. The author also discusses the strengths and weaknesses of these applications, and provides a critical analysis of the evidence in support of each. This chapter is intended to provide the reader with a solid understanding of the practical applications of the subject, and to prepare them for the more theoretical discussions discussed in the following chapters.

2.1 Theoretical Foundations

2.2 Practical Applications



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The following table shows the number of people who have been born in the United States since 1941. The number of people born in the United States has increased steadily over the years, with a significant increase in the number of people born in the United States since 1980. The number of people born in the United States in 1941 was 1,000,000. The number of people born in the United States in 1980 was 2,000,000. The number of people born in the United States in 2025 is 3,000,000.



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PART I

INDEX 100.00

PURPOSE OF DISTRICT ATTORNEY'S OFFICE





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INDEX 100.00 - PURPOSE OF THE DISTRICT ATTORNEY'S OFFICE

The purpose of the District Attorney's Office is to carry out the duties imposed by law upon the District Attorney. The principal functions of the District Attorney's Office are as follows:

Public Prosecutor: The district attorney is the public prosecutor (GC 26500).

Preparation and Trial of Criminal Cases: The district attorney prepares complaints upon which warrants are issued for the arrest of people charged with or reasonably suspected of committing public offenses (GC 26501). He draws all indictments and informations (GC 26502), and conducts the trial of criminal cases (GC 26500). He may grant immunity to witnesses (PC 1324). After felony conviction, the district attorney files with the Clerk of the Superior Court his views with respect to the defendant and his crime for transmittal to the Department of Corrections (PC 1203.01), and he assists the Attorney General on appeals from criminal convictions (PC 1256). He obtains civil judgment against bonding companies arising out of bail forfeiture (PC 1306). The district attorney investigates and reports to the Superior Court on all applications for rehabilitation and pardon (PC 4852.12).

Advises Grand Jury: The district attorney is the legal advisor to the Grand Jury (GC 26501).



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Trial of Accusations Against Public Officials: The district attorney conducts the trial of accusations against public officials (GC 3062 and 3071).

Conducts Civil and Criminal Actions for Non-Support of Children: The district attorney is specifically required to prosecute criminal violations for non-support of children (W&I 1570 and 1571). In non-support matters he also brings civil actions to determine paternity (W&I 1574 and CC 231), and conducts civil actions for non-support in California and in other states under the Uniform Reciprocal Support Act (CCP 1674 and CC 139.5).

Abates Public Nuisances: The district attorney conducts civil and criminal actions to abate public nuisances (PC 373a and GC 26528).

Commitment and Trial of Mentally Ill, Drug Addiction, and Inebriacy Cases: The district attorney prepares commitments for the mentally ill (W&I 5047), the mentally deficient and feeble-minded (W&I 5252), narcotic addicts (W&I 5351, 5352, 5354, and PC 6500), and persons addicted to habit-forming drugs and inebriates (W&I 5400 and 5401). He also conducts the trials of these cases (W&I 5127, 5355.5 and 5406.5).

The district attorney prosecutes all violations of state law and county ordinances. He does not prosecute violations of federal statutes or violations of city ordinances.



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To assist the district attorney in performing these functions, he has a staff of assistant and deputy district attorneys, criminal and non-support investigators, clerical personnel, and the Laboratory of Criminalistics.

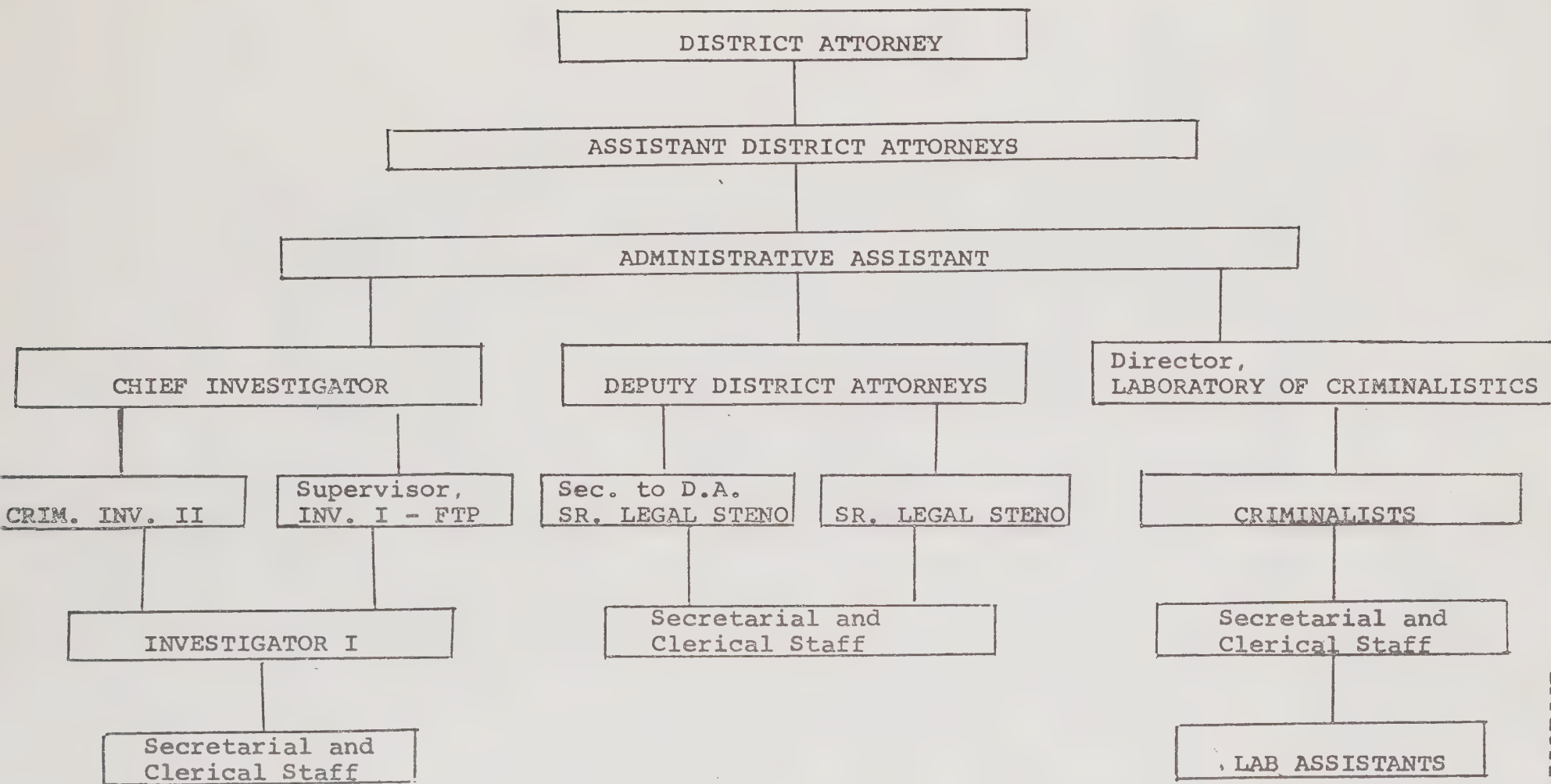




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ORGANIZATION





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Positions in District Attorney's Office

202.00

As of July 26, 1965, the following are the positions in the Office of the District Attorney:

District Attorney -----	1
Assistant Dist. Atty. -----	3
Administrative Assistant -----	1
Attorney IV, or Attorney III, or Attorney II, or Attorney I -----	24
Sr. Legal Stenographer -----	2
Legal Stenographer -----	14
Senior Stenographer -----	6
Intermediate Stenographer -----	3
Intermediate Typist -----	4
Intermediate Clerk -----	2
Receptionist -----	4
Chief Criminal Investigator -----	1
Criminal Investigator II -----	6
Criminal Investigator I -----	12
Total	83

As of July 26, 1965, the following are the positions in the Laboratory of Criminalistics:

Director - Lab. of Crim. -----	1
Supervising Criminalist -----	1
Criminalist III -----	2
Criminalist II -----	1
Criminalist I -----	1
Laboratory Technician (Chemical Analysis) -----	1
Intermediate Stenographer -----	2
Total	9



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Duties and Responsibilities of Administrative Assistant 203.00

1. Under direction, to serve as staff assistant to the District Attorney and to perform administrative and supervisory duties in the name of the department head, and to do other work as required.

2. Assists District Attorney in hiring of investigative personnel as well as directing that department in administrative and fiscal matters; interviews and approves hiring, promotion, re-assignment, or dismissal of all clerical personnel, and advises on problems affecting other personnel.

3. Directs the budgetary and fiscal control program.

4. Plans, organizes, assigns, and reviews work on various management problems in directing fiscal, personnel, office service, and general business activities of the department.

5. Makes work load and operations studies, plans filing and record-keeping procedures, and recommends on and obtains equipment needed to maintain them.

6. Sets up and maintains administrative procedures, including procedures on accident reporting, insurance, expense account reporting, and vacations, and designs or approves office forms, standardizing or simplifying them when possible.

7. Provides liaison between office and other departments on all personnel and administrative matters, and represents department on various training, safety, and other committees.





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8. Does specific projects related to development of departmental administration and analyzes and summarizes reports for his superior.



INDEX 300.00

LEGAL DIVISION





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RESPONSIBILITIES OF KEY PERSONNEL 302.00

Key Personnel 302.10

Assistant District Attorneys (3)

1. Assistant District Attorney  
Administrative - Personnel
2. Assistant District Attorney  
Superior Courts
3. Assistant District Attorney  
Municipal Courts

Attorneys IV (4)

1. Criminal Calendar Deputy
2. San Jose Municipal Court - Chief Deputy
3. Palo Alto Municipal Court - Chief Deputy
4. Outlying Municipal Courts - Chief Deputy

Duties 302.20

Assistant District Attorney, Administrative-  
Personnel: 302.21

1. Assists District Attorney in hiring, promotions,  
salary recommendations, and training of attorneys.
2. Assists District Attorney in approving and  
scheduling vacation and leave for attorneys.
3. Responsible for operation of the office in  
administration and personnel matters in the absence of the  
District Attorney.
4. Handles extraditions.



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5. Performs duties of other Assistant District Attorneys during their absence as instructed by the District Attorney.

6. Approves reductions and dismissals of felonies in Superior Court.

7. Trial of felony criminal cases.

Assistant District Attorney, Chief Trial Assistant -  
Superior Courts: 302.22

1. Assists the District Attorney in assigning, scheduling and reassigning of deputies to particular courts.

2. Assists District Attorney in assigning felony trials to Deputy District Attorneys.

3. Assigns and supervises Attorney IV to supervise the felony trial calendar and felony criminal calendar.

4. Conducts liaison with Superior Court Judges to effect efficient disposition of felony matters.

5. Responsible for operation of the office in matters relating to trials in the absence of the District Attorney.

6. Performs duties of other Assistant District Attorneys during their absence as instructed by the District Attorney.

7. Obtains judgments upon final order of bail forfeiture.

8. Approves reductions or dismissals of felonies in Superior Court.



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9. Trial of felony cases.

Assistant District Attorney, Municipal Courts: 302.23

1. Assists District Attorney in supervising the Attorney IV Chief Deputies and other Deputies assigned to Palo Alto, the San Jose, and Outlying Municipal Courts.

2. Conducts liaison with the Attorney IV Chief Deputies and the Municipal Court Judges to effect efficient disposition of criminal matters.

3. Supervises the Attorney IV Chief Deputies in reassigning deputies to particular courts.

4. Supervises Attorney IV Chief Trial Deputies with respect to their approval of reductions and dismissals of misdemeanor cases.

5. Approves reductions and dismissals of felonies in Superior Court.

6. Performs duties of other Assistant District Attorneys as assigned by the District Attorney.

7. Trial of felony cases.

Attorney IV, Felony Criminal Calendar: 302.24

1. Attends felony criminal calendar for arraignment and setting for trial in Superior Court, and supervises the setting of felony cases for trial.

2. Attends felony criminal calendar for sentencing in Superior Court and advises the court as to the degree of crimes and any special views of the District Attorney's Office with respect to sentence.





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3. Attends felony trial calendar in Superior Court and supervises the order in which felony cases are tried.

4. Trial of felony cases.

Attorney IV, San Jose Municipal Court Chief

Deputy: 302.25

1. Supervision and reassignment when necessary of deputies assigned to the San Jose Municipal Court for jury trials, court trials, traffic trials and preliminary examinations.

2. Responsible for liaison with San Jose Municipal Court Judges to effect efficient disposition of criminal matters.

3. Approves reductions and dismissals of misdemeanor cases by deputies assigned to San Jose Municipal Court.

4. Trial of felony cases.

Attorney IV, Palo Alto Municipal Court Chief

Deputy: 302.26

1. Supervision and reassignment, when necessary, of deputies assigned to the Palo Alto Municipal Court.

2. Conducts liaison with the Palo Alto Municipal Court Judges to effect efficient disposition of criminal matters.

3. Approves reductions and dismissals of misdemeanor cases by deputies assigned to the Palo Alto Municipal Court.

Attorney IV, Outlying Municipal Courts Chief

Deputy: 302.27

1. Supervision and reassignment of deputies assigned to the Sunnyvale, Santa Clara-Cupertino, Los Gatos-Campbell-



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Saratoga Municipal Courts, and the Gilroy-Morgan Hill Justice Court.

2. Conducts liaison with the outlying Municipal Courts judges to effect efficient disposition of criminal matters.

3. Approves reductions and dismissals of misdemeanor cases by deputies assigned to the outlying municipal courts.

4. Trial of felony cases.



DISTRICT ATTORNEY'S OFFICE

TRIAL ORGANIZATION

DISTRICT ATTORNEY

ASSISTANT DISTRICT ATTORNEY,  
CHIEF TRIAL ASST. - SUPERIOR COURT

ASSISTANT DISTRICT ATTORNEY,  
ADMINISTRATIVE-PERSONNEL

ASSISTANT DISTRICT ATTORNEY,  
MUNICIPAL COURTS

DEPUTIES ASSIGNED  
FELONY TRIALS

ATTORNEY IV  
(FELONY CRIMI-  
NAL CALENDAR  
DEPUTY)

DEPUTIES  
ASSIGNED  
ASSISTANTS  
ALL COURTS

ATTORNEY IV  
(PALO ALTO CT.  
CHIEF DEPUTY)

DEPUTIES ASSIGNED  
PALO ALTO COURT

ATTORNEY IV  
(S.J. MUNI CT.  
CHIEF DEPUTY)

ATTORNEY IV  
(OUTLYING MUNI-  
CIPAL COURTS  
CHIEF DEPUTY)

DEPUTIES ASSIGNED  
S'VALE, SANTA CLARA,  
LOS GATOS, & GILROY-  
MORGAN HILL COURTS

DEPUTIES ASSIGNED  
COURT TRIALS & PRELIMS.

DEPUTIES ASSIGNED  
MISDEMEANOR JURY TRIALS

DEPUTIES ASSIGNED  
TRAFFIC TRIALS

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<u>ATTORNEYS - POLICIES AND PROCEDURES</u>	<u>303.00</u>
<u>Dealing with the Public</u>	<u>303.10</u>
<u>Public Servants:</u>	<u>303.11</u>

Members of the District Attorney's Staff are public servants in the highest sense of the word. They are employed by the people of Santa Clara County to assist the District Attorney in carrying out the duties of law enforcement prescribed for him by the legislature of the State of California, and the Board of Supervisors of Santa Clara County. Each member of the public has a right to expect a fair hearing from, and courteous treatment by, members of the District Attorney's Staff. The public has a right to anticipate thoroughly well-informed and professional personnel in the District Attorney's Office. In addition, both the District Attorney and public have a right to expect that matters be handled with dispatch. Prolonged interviews with members of the public digressing into irrelevancies seldom produce a professional result.

<u>Interviewing Complainants:</u>	<u>303.12</u>
-----------------------------------	---------------

Ascertain Jurisdiction: Immediately upon beginning the interview, the staff members should ascertain if the District Attorney's Office has jurisdiction over the subject matter of the complaint. The complaint must involve a crime, a public nuisance, or a request for hospital commitment; otherwise, the District Attorney's Office has no jurisdiction over the complaint.



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When it is ascertained the complaint is not within the jurisdiction of this office, the interview should be promptly terminated and the complainant given the reasons why this office cannot act. In appropriate circumstances, the complainant may be referred to his own lawyer or another agency which handles such matters.

Ascertain the Facts: Once it has been determined the complaint involves a crime or is otherwise within the jurisdiction of the District Attorney's Office, the interview should be narrowed to obtain all the facts possible relating to the commission of the alleged offense. The full names, addresses, and telephone numbers of witnesses should be obtained together with what each witness observed and the relationship of the witness to the parties involved.

In addition, it should be ascertained from the complainant why the other party committed the alleged offense. If the complainant states he knows no reason for the commission of the offense, he should be asked what the other party will state as the reason, if asked.

When all the facts have been ascertained, the complainant should be informed that the other side must be contacted to obtain both sides of the dispute.

A date should be fixed for the complainant to contact



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the staff member following the interview with the other party to decide upon the ultimate disposition of the matter.

Notes and Records: A neat, legible, concise record of each interview should be made on the interview sheet form. The full name, including middle name, age, and address of the complainant, the party being complained against and the witnesses should be obtained.

In addition, the precise statute allegedly violated should be noted together with all the pertinent facts obtained from the complainant.

The interview sheet should also contain a notation as to the immediate disposition of the matter. For example, "Send citation letter - offense, disturbing the peace".

Referrals to other Agencies: Many matters not within the jurisdiction of the District Attorney's Office can be properly dealt with by other public agencies. A list of public social service agencies will be found in Section 304.00 of this manual.

Complainants with civil legal disputes, should be advised to consult their own attorneys.

Generally speaking, complaints about poor treatment at the hands of employees of public agencies should be referred to the head of the agency involved.





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Interviewing Potential Defendants:

303.13

Where a complaint involves the alleged commission of a public offense and the party complained against appears in the office, he should be admonished of his right to have an attorney present and of his right to remain silent prior to any discussion of the subject matter involved.

If the potential defendant indicates he does not wish to discuss the matter, he should be informed of the nature of the complaint and the name of the party complaining. He should be further advised that if he does not wish to tell his side of the story, we shall have to decide what course of action to take against him solely on the basis of information obtained from the complainant and any witnesses.

If the potential defendant asks to have his attorney present, a date should be arranged for a future interview when the attorney can attend.

If the potential defendant desires to tell his side of the story, the interview should be narrowed to obtain all the facts concerning his side of the specific offense complained about as well as the names, addresses, and phone numbers of any witnesses he may have and their relationship to the parties.

At the close of the interview, the potential defendant should be advised as to the course of action the District Attorney's Office proposes to take.



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Interviewing Witnesses:

303.14

The full name, including middle name, age, address, telephone number, and occupation should be obtained at the outset from each witness. The witness should be questioned thoroughly about his personal observations and knowledge of the facts in dispute. Every effort should be made to ascertain exactly what the witness himself remembers. Leading questions should be avoided in interviewing witnesses and care should be exercised not to force inadvertently the witness's recollection to parallel that of the complainant or of the potential defendant. His true observations may well differ from those of either the complainant or the potential defendant. The witness should be admonished that all we are seeking is the truth. He should also be told to have no hesitation in admitting the fact that he has talked to members of our staff or others concerning the case. If the witness is to be served with a subpoena, time may be saved by doing this at the time of the interview.



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Dealing with Members of the Bar

303.20

Members of the Bar should receive the same respectful, courteous, informed, and professional treatment as accorded members of the public. Members of the Bar have a right to represent their clients in dealing with the district attorney's office. They have the right and the duty to advance the interest of their client by all lawful and ethical means. They have a right to expect members of the District Attorney's Office to recognize this fact. In dealing with members of the Bar, the District Attorney's staff should conform to the Rules of Professional Conduct of the California Bar and should use the Canons of Professional Ethics of the American Bar Association as a generally accepted standard of conduct among lawyers.

The vast majority of private lawyers are professionally competent and thoroughly ethical. However, as in any group, an occasional lawyer may be encountered whose professional competence or ethical conduct leaves something to be desired. Every effort should be made to judge both the defendant and the facts of the case on their own merits. Similar defendants involved in similar cases should receive equal treatment from the District Attorney's Office, without the disposition of the case being in any way influenced by the fact that any particular attorney represents the defendant.





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Dealing with the Press

303.30

As public officials, the official actions of the District Attorney and his deputies are matters of concern to the community and should be open to the scrutiny of the public and the press. For this reason, it is the policy of the office that upon inquiry by members of the press or of the public, the following information should be furnished as soon as such information becomes a matter of public record:

1. Filing of a complaint, including all the matter on the face of the complaint, along with the name and address of the defendant.
2. The filing of indictments and informations together with all the matter appearing on the face thereof. In the case of indictments, of course, such information cannot be furnished until the defendant is in custody.
3. Date set for preliminary examination or trial.
4. The evidence shown at the preliminary examination, when such examination was not closed to the public, and which appears in the public transcript of the preliminary examination.
5. Evidence presented at the trial in open court which is part of the public record.
6. The verdict.
7. Any motions for new trial and the grounds stated in the brief which are part of the public record.



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8. The sentence imposed by the court.

9. An appeal, together with the grounds stated in the appeal, which is part of the public record.

It is not the policy of the office, prior to conviction of a defendant, to discuss with the press or the public the fact that matters or individuals are under investigation, the fact that a defendant may or may not have confessed, or the fact that a defendant has a previous criminal record.

Requests from the press or public for information not in the public record should be referred to the District Attorney or one of the Assistant District Attorneys. Deputies should bear in mind the fact that the Appellate Courts have recently reversed a number of convictions where information concerning a defendant's confession and other evidence pointing to his guilt was released to the press and the public prior to its introduction in evidence in court.



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Search Warrants 303.40

Persons Authorized to Draft: 303.41

Assistant District Attorneys and Attorneys IV are authorized to draft search warrants. Other attorneys may draft search warrants with specific authorization from an Assistant District Attorney.

Narcotics officers have been furnished with a form search warrant and form affidavit for use at night in emergency situations. Before an affidavit and search warrant are drafted by the narcotics detail, specific authorization must be obtained from an Assistant District Attorney or one of the Attorneys IV. Use of the form affidavit and form warrant will not be authorized until the Assistant or Deputy District Attorney IV has reviewed the facts with the narcotics officer and approved the wording selected for the affidavit and is satisfied probable cause for the warrant exists.

Procedure for Search Warrants: 303.42

The procedure for search warrants is outlined in Sections 1523 through 1542 of the California Penal Code.

A search warrant may be issued for:

1. Stolen property
2. Property used to commit a felony.
3. Property possessed with intent to use it to commit a probable offense.
4. Property constituting evidence of the commission of a felony (PC 1524).





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A search warrant is issued upon an affidavit showing probable cause and specifically, describing the property and place to be searched (PC 1525). The affidavit must set forth the facts establishing probable cause (PC 1527). Upon showing good cause therefor the warrant may direct a night search (PC 1533). A search warrant must be served by the officer mentioned in its directions or another officer acting under his direction, provided the named officer is present (PC 1530). The search warrant must be executed and returned within ten days after it is issued (PC 1534). If refused admittance, the officer may break in (PC 1531). If property is taken under the warrant, a detailed receipt for the property must be given to the person searched or left on the premises (PC 1535).

Exercise Discretion:

303.43

The use of search warrants is an effective and important means of law enforcement. It is of primary importance in the recovery of stolen property and obtaining evidence of the commission of felonies. It authorizes an invasion of the privacy of a citizen--his home and his automobile--upon showing the magistrate that probable cause exists to justify such a search and invasion of privacy. For these reasons, Assistant and Deputy District Attorneys IV authorized to draft affidavits and search warrants must be thoroughly familiar with the highly technical law of search and seizure. While they should not



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hesitate to draft an affidavit and warrant when probable cause exists, they should be equally firm in refusing to draft an affidavit and warrant in cases where the facts fall short of the probable cause as defined by law. Errors in the search warrant, such as incorrect address, wrong automobile license or description, etc., cannot be corrected after the search, and careless or inaccurate drafting may result in dismissal of a serious offense.

Bibliography:

303.44

Readings in Arrest, Search and Seizure, by Harry Diamond,  
Department of Political Science and Administration,  
Los Angeles State College.

California Criminal Procedure, 6th Ed., Search and Seizure, p. 420 by Fricke and Alarcon.

Searches, Seizures and Immunities - 2 Vols. by Varon.



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Preparing Complaints 303.50

Requirements: 303.51

As Public Prosecutor (GC 25000), the District Attorney prepares complaints for the arrest of people charged with or reasonably suspected of committing public offenses (GC 26501). In addition, he draws all indictments and informations (GC 26502). There are four tests which should be applied in every case before a criminal complaint is prepared. They are as follows:

1. Has a public offense been committed?
2. Is the identity of the perpetrator known?
3. Can the offense be proven beyond a reasonable doubt?
4. Should there be a prosecution under all the circumstances of the case?

No complaint should be authorized unless each of the above four questions is answered in the affirmative.

While the prosecutor owes a duty to the people of the State of California to prepare complaints in proper cases (GC 26501), he also owes a duty to the accused to prove his case beyond a reasonable doubt (PC 1096). The prosecutor should never forget that an arrest is a serious matter, particularly to the individual arrested. Every arrest constitutes a criminal record which, in most instances, will remain with the arrested person for life.

When a complaint is prepared, the proper ultimate charge should be selected at the outset. The practice of authorizing





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one charge and later reducing the case to a lesser charge or increasing to a greater charge should be studiously avoided.

Authority: 303.52

Misdemeanors: All deputies are authorized to prepare misdemeanor complaints when the basic requirements for a criminal complaint have been met.

Felonies: The Assistant District Attorneys and Attorneys IV and III are authorized to prepare felony complaints.

The senior deputies assigned to the Palo Alto-Mountain View Municipal Court, Sunnyvale Municipal Court, Santa Clara-Cupertino Municipal Court, Los Gatos-Campbell-Saratoga Municipal Court, and the Gilroy-Morgan Hill Justice Court may authorize felony complaints for the respective police department in each jurisdiction. When the deputy assigned to these courts is not an Attorney III or more senior attorney, he should, insofar as is practicable, review each felony complaint prepared with an Attorney IV or Assistant District Attorney.

Drafting: 303.53

In General: Complaints may be stated in the ordinary and concise language of the statute (PC 952). The time at which the offense was committed may be pleaded at any time within the statute of limitations before filing the complaint (PC 955). A single complaint may include two or more different





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offenses of the same class of crimes or two or more different offenses connected together in their commission (PC 954).

The secretaries have carded pleadings for each of the common criminal offenses. In case of a question as to pleading, the deputy authorizing the complaint should personally check with the legal secretaries to select the proper wording for the complaint.

Bibliography:

All deputies should be familiar with the following:

Rules of Pleading are set forth in Penal Code Sections 948 through 973.

California Criminal Procedure, 6th Ed., Pg. 98  
"Pleading", Fricke and Alarcon.

Signing and Filing:

303.54

Complaints may be sworn to on information and belief in both misdemeanor (PC 740) and felony (PC 806) cases. All felony complaints should be signed by a peace officer. Misdemeanor complaints should be signed by a peace officer whenever possible. Deputy District Attorneys should not sign complaints except in instances where a stipulated reduction complaint is filed in a municipal or justice court.

Generally, complaints should be filed in the Municipal or Justice Court having jurisdiction of the place where the offense was committed. An exception may be made in certain non-support cases and certain cases involving State regulatory



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agencies where all of the parties involved in the action except the defendant are in the San Jose-Milpitas-Alviso Municipal Court area. These complaints may be filed in the San Jose-Milpitas-Alviso Municipal Court.

Where misdemeanors committed in another judicial district are filed in the county seat, the complaint should show on its face where the offense occurred.

Citizen Complaints: 303.55

Felonies: All citizen complaints concerning the commission of felonies should be referred to the police agency having jurisdiction of the place where the offense occurred. A felony complaint requires preliminary examination, production of witnesses at preliminary and trial, and extensive investigation which a private citizen is not able to perform. In addition, court notices for preliminary examination and trial are sent to the parties signing the complaint. Peace officers know what to do upon receipt of these notices. Private citizens usually do not know what to do upon receiving the notices.

Misdemeanors:

Investigated Complaints: Where the police have investigated the commission of a misdemeanor, and a citizen appears in the office with a copy of the police report seeking a complaint, he should be fully questioned to determine if



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the four requirements for preparing a complaint have been met. If it appears that a complaint should be authorized, and if the police report contains a statement of the accused as to his side of the matter, then deputy district attorneys may prepare a complaint.

When it appears the four requirements for preparing a criminal complaint have been met, but the police report contains no statement from the accused as to his side of the matter, a complaint should not be prepared until the deputy district attorney has given the accused a chance to state his side of the case. The complainant should be advised that the accused will be given an opportunity to state his side of the matter and a future date should be set when the complainant can be informed of the results of our interview with the accused and what action we then propose to take.

Prior to preparing a complaint, the complainant should be informed of the seriousness of a criminal action. He should further be informed that once the action is instituted, only the district attorney can move the court to dismiss it. He should be clearly informed that he cannot "drop charges" after the action has begun.

It is generally better practice to move slowly in authorizing citizen complaints. Trials are usually conducted





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many months after a complaint is issued. Most citizen complainants will no longer wish to come to court over the matter after a few weeks' time has elapsed. Deputy district attorneys should be particularly cautious about approving criminal complaints where family or neighborhood disputes are involved. Many of these disputes are primarily civil in nature where a separation, divorce, civil injunction, or a move away from the undesirable neighborhood is the only real solution to the problem. A criminal complaint rarely solves the basic problem in these cases. Usually, the citation method of handling the dispute will be more successful than authorizing a criminal complaint.

Non-Investigated Complaints: In cases where there has been no police investigation of the citizen's complaint, excepting very minor criminal matters, the complainant should be referred to the police department having jurisdiction of the offense so that the complaint may be investigated. When the investigation is complete, the case should be handled as an investigated complaint described above. The district attorney's office is not an investigative agency and has neither the personnel nor authority to conduct investigative work which should be done by police agencies.

Minor criminal complaints involving only the complainant and the accused may be investigated by the deputy district attorney, using the citation method. A non-investigated citizen complaint should never be authorized without first



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hearing what the accused has to say.

Notes: All citizens' complaints should be noted on the interview sheets provided, in a neat, complete, and legible manner. The full name, including middle name, the age, address, and telephone numbers of the complainant, the accused, and each witness should be obtained and noted. The code section violated, date of violation, and all of the facts concerning the violation should be noted on the interview sheet. Finally, the course of action should be noted at the bottom of the sheet. If a complaint is authorized for a citizen, the interview sheet should be attached to the office copy of the complaint.

Police Agency Complaints:

303.56

Complaints prepared for police agencies must meet the same four requirements as any other complaint outlined in "Requirements" above. Prior to authorizing the complaint, the deputy district attorney should assure himself that all necessary police investigation has been completed. If the investigation necessary to prove the case beyond a reasonable doubt has not been completed, the complaint should not be authorized until such investigation is complete. The fact that a man is already in custody is no justification for issuing a criminal complaint where, because of incomplete investigation, the case cannot be proved beyond a reasonable doubt.



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If a complaint meets the four requirements and is authorized for a police agency, a copy of the complete police report should be attached to the office copy of the complaint. At the time the complaint is authorized, the officer in charge of the investigation should be clearly advised of any follow-up investigation which will be required prior to trial.

At the time the complaint is authorized, the officer should be advised which witness and what evidence will be required for the preliminary examination. The officer should further be advised that the preliminary examination will be held within five days and that the witnesses and evidence must be present in court at that time.

Deputy District Attorneys should resist any tendency to authorize a complaint either greater or lesser than the planned ultimate charge and disposition of the case. The practice of filing a greater charge with the idea in mind of taking a reduction at a later date is not authorized.



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Arraignment and Plea 303.60

Time: 303.61

After arrest, the defendant must be taken before the magistrate without unnecessary delay and in any event, within two days after the arrest, excluding holidays (PC 825 and 847). Failure to take defendant promptly before the magistrate is a misdemeanor (PC 145). It is the policy of the office that defendants be arraigned promptly following their arrest.

Presence of Defendant: 303.62

The defendant must be personally present for arraignment except in misdemeanor cases when he may appear by counsel.

In case of felony, the defendant must personally enter his plea (PC 1018). In misdemeanor cases, plea may be entered by counsel (PC 1429).

Any one or more of the following pleas may be made in criminal cases:

1. Guilty
2. Not Guilty
3. Nolo Contendere (Subject to consent of District Attorney and Court)
4. Former Conviction or Acquittal
5. Once in Jeopardy
6. Not Guilty by Reason of Insanity (PC 1016)

Plea of guilty to a non-capital felony may be made with the advice of counsel in the municipal court. The court





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and district attorney must concur (PC 859a).

Prior felony convictions will be charged in all felony cases (PC 969a). After plea of guilty in municipal court to a felony charge, priors will be added by amending the complaint in the superior court where the defendant has been certified on his plea of guilty (PC 969½). After a grand jury indictment, priors will be added without necessity of further action by the grand jury (PC 969a).

Presence of District Attorney:

303.63

Misdemeanors: With the exception of Nolo Contendere plea and pleas of Guilty to a felony in municipal court which require consent of the district attorney, it is not the policy of the office to have a deputy present for arraignment and plea in misdemeanor cases.

Felonies: Arraignment and plea on felonies is normally scheduled in superior court at 1:30 p.m. on Friday. An Attorney IV Calendar Deputy attends the felony criminal calendar. Any special instructions concerning arraignment, plea, or setting for trial in a felony matter should be related by the deputy in charge of the case to the Attorney IV Criminal Calendar Deputy prior to 1:30 p.m. on Friday.



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Bail 303.70

Felonies: 303.71

Except for certain capital cases (PC 1270) all offenses are bailable (PC 1271). When a felony warrant is issued, the bail is set on the warrant (PC 815a). In felony arrests without a warrant, the defendant must be promptly brought before the magistrate and arraigned on a complaint (PC 849). After a felony arrest without a warrant, bail may be set prior to arraignment by a magistrate having jurisdiction of the offense (PC 1276). Prior to felony conviction, bail is a matter of right; but after conviction, it is a matter of discretion (PC 1272).

In all cases, the magistrate must be satisfied that no portion of the bond or premium was feloniously obtained by the defendant (PC 1275).

Misdemeanors: 303.72

In misdemeanor cases, bail is a matter of right prior to conviction (PC 1271). Bail is also a matter of right on appeal (PC 1272).

In misdemeanor arrests without a warrant, the jailer or court clerk may accept bail prior to arraignment in accordance with a bail schedule established by the judges of the court having jurisdiction (PC 1295).



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Forfeitures:

303.73

A final order forfeiting bond may be obtained 90 days after the initial order of forfeiture is entered for failure of the defendant to appear. Upon final order of forfeiture, the district attorney obtains a summary judgment against the bondsman (PC 1306). These forfeitures are handled by the Assistant District Attorney - Chief Trial Assistant.

Own Recognizance:

303.74

Upon good cause being shown, a magistrate may release a defendant upon his own recognizance (PC 1318). The defendant must file a written agreement to appear and a waiver of extradition (PC 1318.4). Violation of this written agreement to appear is a felony in felony cases (PC 1319.4) and a misdemeanor in misdemeanor cases (PC 1319.6).

Policy:

303.75

It is the office policy that bail be adequate to insure the defendant's appearance in court, and that monies feloniously obtained not be used for bail.

It is not the policy of the office to agree to reductions in bail in consideration for waiver of preliminary examination or entry of pleas of guilty.

When, in the judgment of the deputy authorizing the complaint, a higher or lower than normal bail is proper, a





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note to that effect stating the reasons therefor and the suggested bail should be attached to the complaint for the magistrate's consideration. Deputies should not hesitate to request higher or lower than normal bail in proper cases, keeping in mind the sole purpose of bail is to insure the defendant's appearance in court.

It is the office policy in both misdemeanor and felony cases to obtain bail forfeitures promptly when a defendant fails to appear as promised, and 90 days thereafter to obtain a final order of forfeiture and summary judgment against the bondsman.

It is not the office policy, except in unusual cases, to obtain bench warrants until the 90-day period has elapsed. Bench warrants should not be requested solely because the bondsman wants the Sheriff to apprehend the defendant in order to save the bond.

It has been the practice in Santa Clara County, after felony and misdemeanor convictions, to permit the defendant to remain on bail pending sentence. The office does not oppose this policy except in certain cases. In narcotics cases, in cases where the defendant appears to be a danger to himself or others, and in cases where the defendant may flee the jurisdiction, it is the policy of the office to request that the defendant be returned to custody at the time of felony conviction.



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Preliminary Examinations

303.80

Time:

303.81

Preliminary Examinations must be held not less than two nor more than five days after defendant's arraignment (PC 860 and 861). It is the policy of the office to hold the preliminary examination within five days.

Felony complaints should not be authorized in the first instance unless the deputy is satisfied that the police agency can produce sufficient witnesses in court to insure a holding within five days.

Once started, the examination must be completed at one session unless the magistrate finds good cause shown by affidavit to postpone it. Such postponements cannot be for more than two days at each time nor more than six days in all unless the defendant consents (PC 861).

Authority:

303.82

San Jose-Milpitas-Alviso Municipal Court: Generally, one deputy will be assigned to conduct preliminary examinations and court trials in this court every morning and another deputy will be assigned for the same purpose each afternoon. It is the duty of these deputies to conduct a preliminary examination within five days of arraignment. Except in cases involving felonies authorized by them, these deputies do not have authority to reduce, dismiss, negotiate, or conduct discovery, with respect to the felony cases in this court. Prior to the defendant's



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being held to answer, all inquiries and requests concerning negotiation with respect to felonies should be referred to the deputy who authorized the complaint. After the holding, such requests should be referred to the deputy assigned to the case in Superior Court.

Other Municipal Courts: Municipal Courts other than the San Jose Municipal Court and Justice Courts will generally have from one to three deputies assigned to conduct preliminary examinations and court trials. It is the duty of these deputies to conduct the preliminary examination within five days of arraignment. Except in cases involving felonies authorized by them, these deputies do not have authority to reduce, dismiss, negotiate, or conduct discovery, with respect to the felony cases in these courts. Prior to the defendant's being held to answer, all inquiries and requests concerning negotiation with respect to felonies should be referred to the deputy who authorized the complaint. After the holding, such requests should be referred to the deputy assigned to the case in Superior Court.

Preparation: 303.83

Before going to court for the preliminary examination, the deputy should list the legal elements of the offense and the witnesses who will testify to each required element.

In addition, prior to conducting the preliminary examination, the deputy should contact the officer signing the





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complaint to verify which witnesses will be present and what testimony each can give.

Where children are to be witnesses, the deputy in all cases should personally interview the child with his parents prior to conducting the examination. This interview will serve to inform the deputy of precisely what the child knows and what the child does not know and it will further tend to remove any fear of being questioned in court from the child's mind.

In all cases where a defendant is not held to answer as to any complaint or count, a note stating the reasons should be placed in the file and the deputy issuing the complaint should be informed.

When special circumstances arise during the examination which might affect trial of the case, a note should be placed in the file and the deputy authorizing the complaint should also be notified.

Discovery:

303.84

The preliminary examination is not a trial of the case and all motions for discovery should be made in the Superior Court. (Tupper vs. Superior Court, [1958], 51 Cal. 2nd 263).

Waiver:

303.85

The defendant may waive his preliminary examination if his counsel is present and the district attorney consents (PC 860). It is the policy of the office to accept waivers





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in all cases except those in which it appears that a witness may flee or be importuned upon to change his story or lose his recollection prior to trial. In these special cases the deputy should require that an examination be held.



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Grand Jury 303.90

Functions: 303.91

The functions of the Grand Jury are outlined in Sections 888 through 940 of the Penal Code. The district attorney is the legal advisor to the Grand Jury (GC 26501). In Santa Clara County, the Grand Jury consists of nineteen members (PC 888.2). The Grand Jury is authorized to inquire into the commission of public offenses (PC 917). willful or corrupt misconduct of all public officials (PC 919), and the method that Santa Clara County officials perform their duties (PC 928).

The Grand Jury may receive none but legal evidence (PC 939.6). Where such evidence, if unexplained or uncontradicted, would justify a conviction, an indictment should be returned (PC 939.8). Concurrence of twelve Grand Jurors is necessary to secure an indictment (PC 940). This latter fact should be kept in mind when less than the full Grand Jury can be present during the presentation of a criminal matter. After indictment, priors may be added by amendment without further action by the Grand Jury (PC 969a).

Authority: 303.92

Any assistant or deputy district attorney desiring to call the Grand Jury to present a criminal matter must secure the prior approval of the district attorney.



# memorandum



TO	ALL ATTORNEYS	FROM	WILLIAM P. HOFFMAN
SUBJECT	1974-75 GRAND JURY -- GROUND RULES	DATE	7/12/74

The following ground rules will be effective with respect to all cases presented hereafter to the 1974-75 Grand Jury:

- 1) Prior to planning to present the matter to the Grand Jury, the case and presentation should be discussed with and approved by the Chief Assistant District Attorney.
- 2) The original indictment and a copy thereof should be in the hands of the District Attorney and the Chief Assistant District Attorney, respectively, one day before the day the matter is to be presented to the Grand Jury.
- 3) All arrangements for calling the Grand Jury and contacts to that end with the Court Executive's Office will be made by Betty Brady.
- 4) Decisions to present matters to the Grand Jury should be made approximately one week ahead of time and, in no event--absent a severe emergency--will a Grand Jury be called after noon of the Friday preceding the date of the hearing.
- 5) The Grand Jury and the Presiding Judge have agreed that the Grand Jury will not hear evidence after 11:15 p.m. To that end, deputies should plan the presentation of their evidence carefully so that time estimates are accurate.
- 6) The 1974-75 Grand Jury will ordinarily meet at 7:30 p.m. each Tuesday evening to hear criminal matters except the second week of each month when they will meet on Monday rather than Tuesday.
- 7) The following vacation schedule for Grand Jurors will become effective as indicated:

July 16	-	4	Grand Jurors on vacation
July 23	-	5	" " " "
July 30	-	6	" " " "

Deputies presenting matters in this period should keep in mind that others may or may not show up.

Deputies should continue to be aware of the long-standing policy of this office to take good cases only to the Grand Jury. Once an indictment has been returned by the Grand Jury, no reduction or dismissal of counts should be made. Should a case arise where a deputy feels it necessary to dismiss or reduce a count in an indictment, the dismissal or reduction should be discussed with the Assistant in charge of the Superior Court Division or the Chief Assistant District Attorney.

WPH:nas





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Suitable Cases:

303.93

Generally, it is the policy of the office to present to the Grand Jury only certain classes of criminal cases. These include especially complicated cases where a preliminary examination would entail extraordinary time and expense, narcotics cases where the identity of the informer who might otherwise be in danger can be protected until the time of trial, and cases involving child victims where anticipated cross-examination could have a severe effect upon the child's well-being. The Grand Jury should not be asked to return indictments in cases where it is anticipated that a plea to a lesser charge will be accepted at a later date.

Presentation:

303.94

All presentations to the Grand Jury should be well prepared. The Grand Jury is made up of laymen, not judges, and despite the fact that the legal evidentiary requirements are the same, it generally expects a full presentation of the evidence against a prospective defendant. It is generally good policy to offer a prospective defendant who is represented by counsel an opportunity to tell his side of the story to the Grand Jury, even though the prospective defendant's counsel cannot be present in the Grand Jury Room (PC 939). Grand Jury indictments should be especially carefully drafted because amendment of an indictment is much more limited than amendment of an information.



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Secrecy:

303.95

Grand Jury hearings are conducted in secret (PC 924.2 and 939). It is a crime for a Grand Juror or District Attorney to disclose the fact of an indictment prior to the arrest of the defendant (PC 924 and 168) or to disclose any of the evidence presented to the Grand Jury (PC 924.1). The District Attorney, although not legally guilty of a crime for disclosing testimony before the Grand Jury, is the legal advisor or attorney for the Grand Jury and is therefore morally bound to secrecy on the same subjects. It is the policy of this office not to reveal such testimony. At the time of the defendant's arrest, the fact of an indictment may be disclosed and upon filing the Grand Jury transcript with the Clerk of the Superior Court, the evidence therein becomes a public record, and inquiries as to the evidence presented may then be referred to the transcript.



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Setting for Trial

303.100

Time:

303.101

The welfare of the People of the State of California requires that all proceedings in criminal cases shall be set for trial and be held and determined at the earliest possible time. It is the duty of all courts and prosecuting attorneys to expedite such proceedings to the greatest degree consistent to the ends of justice. Criminal cases have precedence over and are set for trial without regard to civil matters (PC 1050). Criminal trials may not be continued except upon affirmative proof in open court upon reasonable notice that the ends of justice require continuance (PC 1050). The court must dismiss misdemeanor cases not tried within 30 days of the arrest or upon 45 days after a written notice to appear unless the defendant consents to the continuance (PC 1382). Felonies must be dismissed unless brought to trial within 60 days of filing the indictment or information (PC 1382). Felonies take precedence over misdemeanors and defendants in custody take precedence over defendants on bail (PC 1048). Cases where a minor is the victim have precedence over all other actions and shall be tried within 30 days after arraignment (PC 1048).

The defendant is entitled to five days after plea to prepare for trial (PC 1049).

Policy:

303.102

It is the policy of the office to bring all criminal



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cases to trial at the earliest practicable date, and in cases where the victim is a minor, the office policy is to try the case within 30 days. In misdemeanor cases involving a minor, a prepared note asking the court to set the trial within 30 days under Penal Code 1048 should be attached to the complaint prior to filing.





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Continuances

303.110

Where the victim is a minor, no continuances can be granted except after a hearing and determination of necessity thereof (PC 1048). No continuance of any criminal trial shall be granted except upon affirmative proof in open court, upon reasonable notice, that the ends of justice require continuance (PC 1050).

The policy of the office is not to agree to continuances except under the conditions provided in Sections 1048 and 1050 of the Penal Code. Continuances should not be agreed upon at the last minute where witnesses cannot be notified not to come to court. In any event, the court as well as the attorneys must agree to any continuance.

In the event the deputy believes the circumstances properly justify a continuance, and he either requests or agrees to a continuance, he should seek an agreement with opposing counsel that the case will go to trial without further continuance on the date next set. It is not the policy of this office to make appearances for defendants or to make motions for continuance for defense attorneys. They should appear and make their own motions.

It is the responsibility of the deputy agreeing to the continuance to notify the police agency involved and the witnesses of the continuance.



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Reductions and Dismissals: 303.120

Mandatory Dismissals: 303.121

Misdemeanors not tried within 30 days of the arrest or 45 days of signing notice to appear and felonies not tried within 60 days of filing the indictment or information must be dismissed by the court unless the defendant consents to the continuance. When an information is not filed within 15 days after the defendant has been held to answer, the court must dismiss the case (PC 1382).

Dismissal on District Attorney or Court's Motion: 303.122

The court may, either on its own motion or upon the District Attorney's motion, and in the furtherance of justice, order an action to be dismissed (PC 1385). The defendant has no such motion (Peo. vs. Ellis, 204 Cal. 39).

Bar to Further Prosecution: 303.123

A misdemeanor dismissal is a bar to further prosecution (PC 1387). A felony dismissal is not a bar to further prosecution provided it is made under Section 1385 of the Penal Code and the reasons are set forth in the court's minutes (PC 1385).

Authority and Policy: 303.124

Generally: At the time a complaint is authorized, the deputy should make every effort to select a proper charge which can be proved beyond a reasonable doubt. It is not the policy of the office to authorize filing one charge with the idea in mind of reducing it at a later date. This practice requires the defendant to post a higher bail than the proper charge would



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require. It requires the defendant to secure the services of a lawyer in order to be properly charged by the public prosecutor. It is both costly and wasteful of time in that it frequently requires a preliminary examination, payment for transcripts, payment of private or court-appointed attorneys, and eventual return to the Municipal Court calendar where the case should have remained in the first place. For these reasons, planned reductions represent poor administration of justice. The only acceptable excuse for a reduced charge is changed circumstances which materially affect the evidence between the time the complaint was authorized and the time set for trial.

Misdemeanors: All deputies are authorized to reduce or dismiss misdemeanors in proper cases. Prior to assignment for trial, the deputy authorizing the complaint may reduce or dismiss it. After setting for trial, only the deputy assigned to try the case may reduce or dismiss it. The only acceptable reason for a reduction or dismissal is insufficiency of the evidence to prove the defendant guilty beyond a reasonable doubt. ✓  
No reduction should be made without first discussing it with the officer signing the complaint and the complaining witness. Newer deputies are encouraged to discuss proposed reductions or dismissals with senior deputies. Each reduction or dismissal should be noted in the file, together with the reasons therefor and signed by the deputy taking the action.





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Felonies: Prior to obtaining a holding, only the deputy authorizing the complaint is authorized to dismiss or reduce it. After a holding, only the deputy assigned the case for trial has this authority. All reductions after the defendant is held to answer must be approved by the district attorney or one of the assistant district attorneys. The only acceptable reason for reducing or dismissing the felony is insufficiency of the evidence to prove the defendant guilty beyond a reasonable doubt. In all cases prior to submitting the proposed reduction or dismissal to the district attorney or one of his assistants for approval, the proposed reduction or dismissal should be discussed with the officer signing the complaint and the complaining witness.

Priors: 303.125

It is not the policy of the office to dismiss prior felony convictions or prior drunk driving convictions where such priors can be proved.

Records: 303.126

In every case reduced or dismissed, a disposition sheet must be filled out with the name of the officer consulted, the name of the complaining witness consulted, if any, and the agreement or disagreement of these parties with the reduction or dismissal.



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In addition, the reasons for the reduction or dismissal will be stated on the disposition sheet in such a manner that they may be understood by anyone reviewing the file without further elaboration.



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Extraditions 303.130

Fugitives Found in California: 303.131

Extradition:

Fugitive Complaint: Upon receipt of reasonable information that a fugitive from a felony is in Santa Clara County, a peace officer may arrest without a warrant (PC 1551.1). When the arrest is made, a fugitive complaint is obtained from the district attorney charging the defendant with the out-of-state crime or escape therefrom or violation of parole therefrom (PC 1551). The district attorney then immediately notifies the foreign prosecuting attorney of the arrest (PC 1551.3).

Magistrate Hearing: The fugitive is promptly arraigned upon the complaint before a magistrate who may require an exemplified copy of the out-of-state indictment, information, or verified complaint (PC 1551.2). The magistrate may also inquire into the identity of the defendant (PC 1552).

Extradition Hearing: When the magistrate is satisfied as to the identity of the defendant, he may commit the defendant and set a time within 30 days to enable the out-of-state governor to institute extradition proceedings (PC 1552). If the extradition is not completed within 30 days, the matter may be set over for an additional 60 days (PC 1552.2). Persons awaiting extradition are entitled to bail (PC 1552.1). When extradition is complete and the Governor of California's warrant



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arrives, the defendant must be brought before a magistrate before he is turned over to the out-of-state agent (PC 1550.1). He may have a further reasonable time to apply for a writ (PC 1550.1).

Waiver: If a fugitive desires to waive extradition, a waiver is prepared by the district attorney and the defendant is taken before a magistrate where he signs the waiver in open court. The out-of-state agents are notified immediately and as soon as they appear, the defendant is turned over to them forthwith without further proceedings (PC 1555.1).

Policy: It is the policy of the office to expedite extraditions of fugitives found in California to the end that similar treatment will be accorded this office when fugitives flee into other jurisdictions. No continuances should be agreed upon except as provided in Section 1550.1 of the Penal Code after the Governor of California's warrant has reached Santa Clara County. It is the policy of the office to insist that fugitives found in Santa Clara County be required to post bond. Release of fugitives on their own recognizance is not proper since they have already demonstrated their proclivity for flight by fleeing the former jurisdiction.

Fugitives Found in Other States: 303.132

All requests for extradition of fugitives from Santa Clara County who are found in foreign states will be approved and handled by the Assistant District Attorney for Personnel.





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Felony non-support cases involving out-of-state fugitives are instituted by the Senior Deputy District Attorney of the Family Support Division and approved by the Assistant District Attorney for Personnel. Felony non-support extraditions will not be approved unless 60 days have elapsed since bringing a reciprocal action for support or a clear showing submitted that such action would be of no avail (CCP 1661).

The office policy is to approve requests for extradition of fugitives from Santa Clara County in those cases where the ends of justice justify the cost of extradition.



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Trial 303.140

Law: 303.141

The District Attorney, as public prosecutor conducts the trial of criminal cases (GC 26500).

Preparation: 303.142

Law:

General: All deputies are assumed to know the general rules of evidence. Deputies should be especially familiar with the rules of evidence relating to hearsay, admissability of statements of the defendant, qualification of expert witnesses, and relevancy and materiality of evidence. It is good practice to review law school notes on the course in evidence prior to commencing the trial of criminal cases.

Elements of Offense: Prior to trial, the deputies should become thoroughly familiar with and prepare a list of elements of each offense involved in the trial. As well as the legal elements of the offense, the list should include jurisdiction and the identity of the perpetrator as elements. It is good practice to keep this list at all times in the courtroom and to commit it to memory prior to trial.

In cases where a defense other than identity of the perpetrator is anticipated, a similar list of legal defenses should be prepared and committed to memory.



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Instructions: The deputy assigned to try the case is responsible for drafting a complete set of instructions prior to trial. CALJIC is available with the secretaries for this purpose. Except in cases involving violations of Section 23102 and 14601 of the Vehicle Code where the secretaries have prepared sets of instructions, the secretaries should not be asked to select instructions. It is the duty of the deputy to furnish the secretaries with a list of the instructions desired. The court has the right to rely upon the professional competence and integrity of the deputy district attorney. Deputies are expected to furnish the court with complete instructions covering all evidence and defenses introduced at the trial, so that if the district attorney's instructions alone are given to the jury, there will be no error in the case.

Evidentiary Problems: Deputy district attorneys should anticipate objections to the introduction of evidence by the people and should be prepared to furnish the court with cases supporting the introduction of offered evidence. This research should be accomplished prior to trial.

Facts: Prior to trial, each witness should be interviewed by the deputy to ascertain exactly what the witness can testify to with respect to the legal elements of the offense. The witness should be thoroughly interrogated, particularly with respect to observations relating to anticipated defenses.





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It is good practice to make a list of each witness prior to trial, together with the testimony anticipated opposite the list of legal elements of the offense involved in the witness's testimony. Preparation of this list of legal elements, witnesses, and testimony anticipated serves to clarify the issues in the case in the mind of the deputy assigned to the trial.

It is good practice to have an investigator or peace officer present when interviewing witnesses.

It is usually profitable for the deputy district attorney to visit personally the scene involved in the testimony prior to trial. In addition, witnesses testifying concerning the scene of the offense should revisit the scene shortly before the trial to refresh their recollections.

Role of Public Prosecutor:

303.143

As public prosecutor, it is the duty of the deputy district attorney to present to the court or jury all of the evidence in his possession bearing upon the truth of the charge for which the defendant is on trial. He owes a duty to the people of the State of California to present all evidence indicating the guilt of the defendant. He owes a duty to the people and to the defendant to present all evidence which points to the defendant's innocence. His primary duty is to present fairly all of the evidence to the end that the trial shall result in the ascertainment and declaration of the truth. It is not his primary duty to obtain a conviction. If, after



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reviewing all the evidence, the deputy does not believe the defendant to be guilty, he should not try the case. He should either arrange for a proper disposition of the matter or discuss the case with one of the senior deputies to confirm his appraisal of the evidence.

Deputies should not especially concern themselves with so-called "trial techniques" believed to assist in obtaining a conviction. The only proper trial technique for the public prosecutor is a well-prepared, clear and honest presentation of all the evidence relating to the truth of the charge. He will find this "technique" is by far the most successful in the long run in obtaining the conviction of the guilty and the acquittal of the innocent.

The deputy district attorney should at all times conduct his relationship with the court and opposing counsel in a professional and respectful manner. To this end, compliance with the Rules of Professional Conduct of the State Bar of California is mandatory and in addition the Canons of Professional Ethics of the American Bar Association should be used as a guide of professional conduct generally accepted by members of the bench and bar. All deputies should be familiar with the Rules of Professional Conduct and the Canons of Professional Ethics.



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Sentence 303.150

Appearance of District Attorney: 303.151

The District Attorney does not attend sentencing in misdemeanor cases. Deputies may attend misdemeanor sentencing where some special consideration requires their presence to bring facts relating to the sentence to the attention of the court.

In felony matters the sentencing calendar is conducted at 10:00 a.m. on Friday in the Superior Court. An Attorney IV attends this calendar. Any special instructions relating to the degree of the offense or otherwise involved in sentencing should be transmitted to the calendar deputy prior to 10:00 a.m. on Friday.

Policy: 303.152

Sentencing is primarily the responsibility of the court and the Adult Probation Department. It is the policy of the office not to become involved in the sentencing or other disposition of the matter after conviction. If an opinion as to the sentence is requested of a deputy by the court or probation officer, he should give his opinion. In special cases where certain facts relating to sentence should be brought to the attention of the court, the deputy may contact the probation officer assigned or the court at the time of sentence or prior thereto. The Court should not be contacted





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concerning sentencing prior to the court hearing by a deputy unless the defense attorney is previously notified, given an opportunity to be present, and told what facts are to be presented.

Deputies should avoid becoming involved or discussing penalty or punishment with defense counsel prior to plea of guilty. A plea entered on the district attorney's representation that a certain punishment will be imposed may be withdrawn at any time. Only the court can affix the penalty.

The only cases in which a deputy district attorney can stipulate to penalty prior to plea are those where the jury fixes the penalty as well as the guilt of the defendant.

Offenses of statutory rape, felony automobile manslaughter, and murder are offenses of this nature. The office policy in agreeing to penalty prior to plea in these cases is not to agree to a penalty less than could reasonably be anticipated from a jury upon the trial of the case.

Alternative punishment felonies where no penalty is imposed may be declared by the court to be misdemeanors at the time of sentence or at any time during the probationary period. The district attorney cannot stipulate to a misdemeanor under Penal Code 17 at the time of plea. It is the policy of the office to oppose fixing the case as a misdemeanor under Penal Code 17 at the time of plea. The office does not ordinarily





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oppose Penal Code 17 misdemeanors at the end of the probationary period where the defendant has successfully fulfilled the terms of his probation.



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Appeals 303.160

Misdemeanors: 303.161

The district attorney is responsible for preparing the brief and conducting the argument in appeals from inferior courts to the Appellate Department of the Superior Court. Appeals should be handled by the same deputy who handled the case.

Where an appeal from an inferior court is certified to the District Court of Appeals under Section 1471 of the Penal Code, the Attorney General may handle the appeal. The deputy who tried the case should assist on the appeal (PC 1256).

Felonies: 303.162

Appeals from felony convictions in the Superior Court to the District Court of Appeals are handled by the Attorney General. The deputy district attorney who tried the case should assist in the appeal (PC 1256). The deputy district attorney should forward to the Attorney General a resume of the pertinent evidence and where it may be found in the transcript together with legal authority supporting the rulings of the trial charge. It is not the policy of the office for deputies to attend arguments before the District Court of Appeal.

Policy: 303.163

The office policy is to resist appeals by defendants from conviction by court or jury in all proper cases. The office policy is to take appeals in all cases provided by law



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from clearly erroneous rulings in favor of the defendant where  
the ends of justice justify the time and cost involved.





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Hospital Commitments 303.170

Requirements: 303.171

Criminal Charge Pending: All requests for hospital commitments of prospective patients charged at the time with a criminal offense will be referred to the deputy handling the criminal case. The only degrees of insanity recognized by the legislature as being sufficient to terminate a criminal prosecution are insane at the time of the commission of the crime (PC 1367) and insane during the pendency of the criminal proceedings (PC 1368). In order to be adjudged insane at the time of the commission of the offense, the defendant must be in such a mental condition that he did not know right from wrong or that he did not know the nature and quality of his act at the time that it was committed. To meet the test of insanity during the pendency of criminal proceedings, the defendant's mental state must be such that he is unable to understand the nature of the proceedings against him or to cooperate in his own defense with his counsel. Mental illness short of these tests does not, as a matter of law, terminate the criminal proceedings.

It is the office policy not to terminate the criminal proceedings unless the defendant meets the test prescribed by the legislature. However, exceptional circumstances may arise in which a commitment would be proper during the pendency of the criminal prosecution. Normally, such cases would involve



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minor law violations and serious mental illness falling short of the degrees of mental illness legally sufficient to terminate criminal proceedings.

No Criminal Charge Pending:

a. Voluntary Commitments: Mentally ill patients and narcotic addicted patients may commit themselves voluntarily to Agnews State Hospital or the Narcotic Rehabilitation Facility operated by the Department of Corrections. The office policy is to encourage voluntary commitments in these cases prior to authorizing involuntary commitments. Agnews will permit mentally ill patients to sign themselves in at the admitting desk at Agnews provided their mental illness has not reached the point where they are unable to appreciate the fact that they are signing themselves in to a mental hospital. Voluntary narcotics commitments may be instituted under Section 6500 of the Penal Code.

b. Medical Examination: No commitment will be authorized without a medical examination and an opinion from a medical doctor that the patient is, in his opinion, mentally ill, alcoholic, or addicted to narcotics. When patients refuse to see a doctor, the requested commitment should be referred to the Screening and Counseling Center operated by the Santa Clara County Health Department at 2220 Moorpark Ave., San Jose. Screening and Counseling have personnel who can visit the home to ascertain the condition of the prospective patient.



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c. Petition: Petitions should not be authorized where the petitioner reaches the office after 2:00 p.m. By the time petitions initiated after 2:00 p.m. are processed and the patient is transported to Agnews by the Sheriff's Psychiatric Detail, it is usually after 5:00 p.m. Most of the admitting personnel at Agnews leave at 5:00 p.m. and the patient cannot be properly processed after that time except in emergency situations.

The petition should state facts indicating mental illness, alcoholism, or addiction as the case may be rather than conclusions. All known facts indicative of the patient's mental condition should be included. The name of the doctor who examined the patient and his opinion should be included. The petition must include facts which indicate the patient is in need of care, supervision, treatment or restraint, or is a danger to himself or others, to be legally sufficient. Prior hospitalization should be set forth in the petition. Brief statements by police officers on emergency commitment forms should not be copied into the petition. The petition is a pleading and subject to demurrer.

Mentally Ill:

303.172

The district attorney prepares commitments for the mentally ill (W&I 5047). The procedures are outlined in Sections 5000 through 5189 of the Welfare and Institutions Code. The tests for commitment for observation as mentally ill are as follows:





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1. Persons of such mental condition as to need supervision, treatment, care, or restraint.

2. Persons of a mental condition that are a danger to themselves or others and are in need of supervision, treatment, care, or restraint (W&I 5040).

Unless the facts indicate the patient is a danger to himself or others, in addition to showing that he needs supervision, treatment, care, or restraint, the court is not authorized to order him delivered to the hospital for immediate observation and treatment (W&I 5050). The facts in most mentally ill cases will indicate the patient is potentially dangerous to himself or others, and where this is the case, the petition should clearly so allege in order to permit his immediate transfer to Agnew for observation and treatment.

Efforts should be made to list the "responsible relatives" on the petition because, although they are no longer liable for State hospitalization costs, it is of value to the hospital to be able to locate these close relatives of the patient. By agreement with Santa Clara County, Agnews State Hospital is used for the observation period normally held in the Psychiatric Ward of County Hospitals in counties which do not have a State mental hospital. The County reimburses Agnews for costs of the observation period, and, despite recent decisions that responsible relatives are not liable for State Hospital





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costs, the County still endeavors to collect from them for the observation period.

Particular care should be exercised in committing one spouse at the request of the other. A medical examination should always be required prior to commitment, and this is especially true in the husband-wife situation, where marital discord may be confused with mental illness.

Committed persons may request a jury trial within 10 days of the court commitment date (W&I 5125). This trial, although conducted by the district attorney, is civil in nature. Verdict is based upon the preponderance of the evidence, and a 9-3 verdict decides the case. Jury trials of committed persons will normally be assigned to the deputy authorizing the commitment.

Mentally Deficient and Feeble-Minded: 303.173

Although the district attorney may prepare petitions in these cases (W&I 5252), by agreement in Santa Clara County, both adult and juvenile commitments of the mentally deficient and feeble-minded are handled by the Juvenile Probation Officer.

Narcotic Addicts: 303.174

Generally: Although provision exists for commitment of narcotic addicts to State mental hospitals, the administration of the State mental hospitals has indicated that since a special facility has recently been specifically created for narcotic addicts under the Department of Corrections, the State



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mental hospitals no longer desire to receive narcotic addicts. Therefore, narcotic addicts should only be committed to the Narcotic Detention, Treatment, and Rehabilitation Facility operated by the Department of Corrections. These are known as California Rehabilitation Centers (PC 6550). The procedures are outlined in Sections 6399 through 6555 of the Penal Code.

Misdemeanants: It is the policy of the office that all persons convicted of misdemeanors who may be addicted or in imminent danger of becoming addicted to narcotics be certified to Superior Court for examination as narcotic addicts and, if found to be such, sent to the California Rehabilitation Center for treatment (PC 6450).

Felons: It is the policy of the office that all persons convicted of felonies, except those where the probation report indicates they are not fit subjects because of their pattern of criminality, and except those ineligible under Section 6452 of the Penal Code, be examined to determine if they are narcotic addicts, and if such be the case, that they be sent to California Rehabilitation Centers for treatment (PC 6451). The California Rehabilitation Centers do not want, and have in the past rejected, hardened criminal types. The deputies should further keep in mind that the California Rehabilitation Centers were created to treat addicts and not to provide a shorter and softer alternative method of serving time for felons whose pattern of criminality indicates they are not fit subjects for a hospital-like environment.



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Voluntary: Office policy encourages voluntary commitments of addicts to the California Rehabilitation Centers under Section 6500 of the Penal Code. The addict himself may sign an affidavit indicating his addiction.

All requests for voluntary commitment should be checked with the joint Sheriff-San Jose Police Department Narcotic Detail to determine whether narcotics officers have sales or possession cases already made but not yet filed against the addict. If no criminal prosecution is pending, and none is in the offing, the voluntary commitment should be authorized.

Inebriates: Agnews Hospital will not accept voluntary commitment by alcoholics. Commitments of alcoholics for observation should not be made unless a prior medical examination indicates the patient is an alcoholic to the extent he is a danger to himself or others. Alcoholic commitments should also be discouraged where the patient does not desire to be treated at Agnews. The District Attorney's Office has been advised by the staff at Agnews that it is very difficult to cure an alcoholic who desires treatment, and almost impossible to cure one who does not desire to be treated.

It is the policy of the office to encourage alcoholics to participate in voluntary programs such as Alcoholics Anonymous and the Alcoholic Rehabilitation Clinic.

Alcoholics should also be advised that under Section 5404 of the Welfare and Institutions Code, the court may remove





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them from Agnews and place them into the County Jail Farm for  
a period of up to one year.



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Public Nuisances: 303.180

Public Nuisances: 303.181

A public nuisance is a nuisance which affects the entire community or neighborhood (CC 3480). Persons maintaining public nuisances upon their property after reasonable notice in writing from the Health Officer, District Attorney, or City Attorney to remove same are guilty of a misdemeanor (PC 373a). In addition, the District Attorney may, and when directed by the Board of Supervisors must, bring a civil action to abate the public nuisance (GC 26528 and CCP 731). It is the policy of the office to make every reasonable effort to obtain voluntary abatement of public nuisances prior to instituting criminal or civil proceedings or both.

Private Nuisances: 303.182

A nuisance which does not interfere with the use of the property or of persons comprising the entire community or neighborhood is a private nuisance (CC 3481). The district attorney has no jurisdiction over private nuisances and citizens complaining of these should be referred to their private attorneys. Most complaints about activities on the neighbors property will fall into the private nuisance category.

Zoning Violations: 303.183

By agreement with the County Counsel, all actions concerning zoning violations are handled by the County Counsel's Office.



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Policy - Specific Cases 303.190

Policy - Violations 23102 VC: 303.191

It is the policy of the office not to reduce or dismiss violations of Section 23102 of the Vehicle Code except in exceptional circumstances where a review of the evidence available at time of trial is insufficient to prove the defendant guilty beyond a reasonable doubt. Cases involving a section violation of Section 23102 of the Vehicle Code, cases with a Blood Alcohol higher than .10%, and cases where the arresting officers are positive that the driver was under the influence should rarely require reduction or dismissal.

It is the policy of the office to charge all prior convictions of Section 23102 of the Vehicle Code. Priors which can be proved should not be dismissed.

In Blood cases, where a criminalist's testimony is anticipated, the Laboratory of Criminalistics must be notified at least a day prior to trial. The notice should include:

1. Name of defendant
2. Laboratory case number (from BA envelope)
3. What court
4. Jury or Court trial
5. Date
6. Time appearance is desired.

In Blood cases, the technician also should be notified at least one day prior to trial.



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Policy - Violations of Section 14601 VC: 303.192

It is the policy of the office to charge all prior violations of Section 14601 of the Vehicle Code. It is the policy of the office that 14601 VC priors which can be proved shall not be dismissed.

If the defendant was in violation of Section 14601 VC at the time of his citation, it is the policy of the office that he be prosecuted for the violation. Deputies will not request or stipulate to continuances for the purpose of defendant's obtaining insurance, applying for a license, or having his license reinstated. If the court desires to continue the matter for any of these purposes, the record should be clear that the District Attorney's Office neither requested the continuance nor stipulated to it.





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Policy - Shoplifting Cases:

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It is the policy of the office to prosecute theft cases involving shoplifting in all instances where the case can be proved beyond a reasonable doubt and where the representative of the store desires a prosecution.

In cases where the representative of the store states in writing that he does not desire prosecution, where the defendant is a first offender, and where the evidence does not indicate scheme or plan, the case may be dismissed if the deputy feels, in light of all the facts, the dismissal is proper.

In any event, no shoplifting case will be reduced or dismissed without discussing the disposition with the representative of the store involved.



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Policy - Violations Section 647(a) PC 303.194

It is the policy of the office that violations of Section 647(a) of the Penal Code will be prosecuted in all cases where the violations can be proved beyond a reasonable doubt. The fact that the defendant will have to register as a sex offender under Section 290 of the Penal Code is not to be taken into consideration in deciding whether it is proper to reduce or dismiss the case. The requirement of registration was specifically provided for by the legislature when it enacted Section 290 of the Penal Code. When a defendant is granted probation upon conviction under this section, and he fulfills the terms of his probation, he can have his record expunged under Section 1203.4 of the Penal Code. When the record is expunged, he no longer has to register (Peo. vs. Taylor (1960) 178 Cal. App. 2nd, 472).



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Policy - Child Molesting Cases:

303.195

It is the policy of the office that violations where the victims are minors will be prosecuted in all cases where the violation can be proved beyond a reasonable doubt. The fact that the defendant will have to register as a sex offender under Section 290 of the Penal Code is not to be taken into consideration in deciding whether it is proper to reduce or dismiss the case. The requirement of registration was specifically provided for by the legislature. When a defendant is granted probation upon conviction under a child molesting charge, and he fulfills the terms of his probation, he can have his record expunged under Section 1203.4 of the Penal Code. When the record is expunged, he no longer has to register. (Peo. vs. Taylor (1960), 178 Cal. App. 2nd, 472).

Care should be taken in authorizing child molesting cases in the first instance. It is rarely possible to obtain a conviction when the only witness against the defendant is one child, and the defendant denies the commission of the offense. Usually some corroboration is necessary before a conviction can be anticipated. Such corroboration may consist of a confession by the defendant, another child joined in the same complaint who was molested by the defendant, or a prior felony child molesting conviction which can be shown at the trial. In cases where the defendant has molested a neighborhood child, it is very frequently possible to find other children who have been





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similarly molested if a thorough investigation is made in the neighborhood. This should be done before issuing an uncorroborated complaint charging child molesting.

Where the father is the child molester, the child in all cases should be taken to the Children's Shelter where it can be made a Ward of the Juvenile Court and an order entered keeping the father away from the child until the issue is determined. The child is usually then returned to its mother pending the trial of the case. If this is not done, the father usually bails out and returns to the home, and by the time the case is tried, he has not only resumed his molesting, but has made an emotional appeal to the child to save him by changing her story prior to trial.

Where lengthy cross-examination is anticipated at the preliminary examination, which might result in a traumatic experience for the child, the Grand Jury may be called upon, with the approval of the District Attorney, to return an indictment in the case.



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Social Service Agencies

304.00

Adult and Child Guidance Clinic

1165 Park Avenue  
San Jose (292-9353)

Agnews State Hospital

San Jose, California  
(262-2100)

Alcoholics Anonymous

210 South 1st Street  
San Jose (297-3555)

Alcoholic Rehabilitation Clinic

2320 Moorpark Ave.  
San Jose (295-2003)

Use, when necessary, for pre-Agnews commitment  
report. Refer people with drinking problems there.

Bureau of Social Work

1885 The Alameda, Suite 206  
San Jose (241-4300)

Services to those returning to community life  
after hospitalization at a State Hospital.  
Counseling to families of patients.

Catholic Social Service

San Jose (295-5014)  
Mt. View (968-5994)  
Palo Alto (322-1847)  
Gilroy - Wed. Only (842-6050)

Refer people with family or marital problems, also  
unwed mothers, Person need not be Catholic.

Family Service Organization

San Jose (295-7664)  
Palo Alto-Los Altos (326-6576)  
Cupertino (252-3000)  
Sunnyvale (739-1192)  
Mt. View (968-3371)

Refer people with personal, marital, parent-child  
or other adjustment problems.

Friends Outside

285 So. Market St.  
San Jose (295-8811)

Service to families of prisoners.



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Juvenile Probation Department and Juvenile Court

840 Guadalupe Parkway  
San Jose (299-2145)

Refer people with children beyond parental control.  
NOTE: Refer people complaining about other's  
children to appropriate police agency.

Legal Aid Society

Suite 206, Spring Bldg.  
85 W. Santa Clara  
San Jose (295-6703)

Refer indigents with civil legal problems.

Screening and Counseling Center

2220 Moorpark Ave.  
San Jose (297-1636, Ext. 357:  
After 5:00 P.M., 297-1645)

Use, when necessary, for pre-Agnews commitment  
report. Refer those who appear to be mentally ill.  
Home visits by nurse possible in emergency.

Synanon Foundation, Inc.

110 Lombard Street  
San Francisco (DO 2-6778)

Some success with narcotics addicts on voluntary  
basis.

Veteran's Administration Field Social Work Office

Room 113, County Office Bldg.  
San Jose (286-2525, Ext. 272)

Service to veterans with rated medical or  
psychiatric disabilities.

Veteran's Administration Hospital

3801 Junipero Serra Blvd.  
Palo Alto (326-5600)



INDEX 400.00

CRIMINAL INVESTIGATION DIVISION





400.00  
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INDEX 400.00 - CRIMINAL INVESTIGATION DIVISION

AUTHORITY AS PEACE OFFICERS, STATE OF CALIFORNIA 401.00

The Investigators of the District Attorney's Office are peace officers as authorized and described under Section 817 of the Penal Code of the State of California.



DEPT. 202 INDEX 402.00

DATE August 1, 1965

EFFECTIVE Immediately

FUNCTIONS

402.00

Criminal Investigators II:

The Criminal Investigator II performs skilled criminal investigation work for the Office of the District Attorney.

He may participate in or supervise the more difficult criminal or confidential field investigations; act as leader of a small group of criminal investigations; locate and interview persons, take statements and depositions, and evaluate evidence; examine records, and collect data, prepare detailed reports of investigation, including synopsis of facts, dates, names, places, findings of arresting officers, statements of witnesses, victims and suspects, and listing of evidence.



403.00  
403.10  
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RESPONSIBILITIES OF KEY PERSONNEL 403.00

Chief Investigator 403.10

1. Implement and direct the general and specific policies of the District Attorney as the policies pertain to the Investigation Division.

2. Assign cases for investigation; review work and reports; advise and suggest courses of action; generally supervise investigations and investigation procedures.

3. Review, screen, and disseminate complaints and information received for assignment, to the proper authority in accordance with the policies and rules of the District Attorney's Office.

Criminal Investigator III 403.20

1. Makes, participates in, or may supervise the more difficult criminal or confidential field investigations.

2. May act as supervisor of a group of criminal investigators.

3. Instructs, advises, and works with the group in performing investigations of suspected violations of laws, rules and regulations.

4. Locates and interviews persons, takes statements and depositions, and evaluates evidence.

5. Examines records, collects data, and reports facts.

6. Investigates complaints and makes character investigations.

7. Serves legal papers, files complaints, prepares cases, and appears as a witness in court or at administrative hearings.



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8. Prepares detailed reports of investigation, including synopses of facts, dates, names, places, findings of arresting officers, statements of witnesses, victims and suspects, and listing of evidence.

9. Assists deputy district attorneys in preparation of cases for prosecution.

10. Assists a superior in planning and directing a major investigation program, acts for him in his absence.





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404.11  
DATE August 1, 1965  
EFFECTIVE Immediately

POLICY AND PROCEDURES 404.00

Working Hours 404.10

The Criminal Investigator II is theoretically on duty twenty-four hours a day. Normal working hours are from 8:00 a.m. to 5:00 p.m., Mondays through Fridays, except when otherwise assigned or dependent upon the needs of cases under investigation.

Statistical Reporting of Working Hours: 404.11

Each Investigator assigned to the investigation of matters generally handled by the Investigator II Division will maintain an activity report; the main purpose of that report being to record the hours devoted to each investigation.

Each Investigator will be furnished with a form which will be completed weekly and given to the Chief Investigator each Monday morning. The period covered will be Sunday through Saturday of each week. After the reports are reviewed by the Chief Investigator, they will be given to the Secretary of the Division who will maintain a file under the submitting investigator's name. From the reports, the Secretary will prepare a visual graph, as directed, which will identify the investigator and the month and year in which the "Time Devoted to the Case" will be graphically portrayed.

The investigators who normally perform Failure to Provide work will also submit a report when assigned to investigations other than Failure to Provide.

The reporting investigator will note in his report, when the occasion presents itself, that he is working past the



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normal eight-hour day, and further, when he has exceeded the forty-hour week schedule.

Prior to going on his vacation, the reporting investigator will file a report indicating the vacation period covered and the days taken as normal vacation time. He will further indicate, as accurately as possible, time taken off from work for any other reason, whatever it might be.



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Limitation of District Attorney Investigators' Activities 404.20

The Criminal Investigator II is not a police officer in the general sense of the word. He will not engage in investigations or otherwise participate in the normal police functions, except as assigned by the District Attorney or the Chief Investigator.



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DATE August 1, 1965

EFFECTIVE Immediately

Identification as District Attorney Investigator 404.30

The Investigator will always carry on his person, while on duty, his regularly issued identification folder and will properly and courteously display these credentials in situations where it should be displayed. He is not to exhibit, nor publicly announce his position, except on official business pertaining to the District Attorney's Office.





DEPT. 202 INDEX 404.40

DATE May 1, 1970

EFFECTIVE Immediately

Firearms - Policy

404.40

The investigator shall provide himself with a standard .38 or .357 caliber police-style revolver which shall be kept in a proper-functioning condition. It shall be of a size which makes it concealable on the person. It should not be publicly displayed, and is to be employed only for self-protection. The investigator will constantly have in mind the potential physical, legal, and moral dangers attached to the possession and use of firearms.

To assure competence in the care and use of firearms and to develop the habits of safety, all investigators are required to attend scheduled firearms courses and be qualified under the direction of a certified range master. The investigator designated as training officer shall schedule at least three firing-range dates in a calendar year.

It shall be mandatory that each investigator attend no less than two firing-range sessions a year. Failure to comply with the attendance requirements will result in a one-day work suspension, without pay. This will be deferred for a six-week period, in which time the investigator may become qualified on his own time by a certified range master.



DEPT. 202 INDEX 404.40  
DATE May 1, 1970  
EFFECTIVE Immediately

Investigators are not required to be armed in their off-duty hours. They will carry a concealable firearm on their persons at any time that the conditions of their status as peace officers may require the immediate availability of a firearm.

(Further reference is made to Santa Clara County Counsel's Memorandum Opinion of Deputy County Counsel Donald J. Fallon, dated January 21, 1970.)



DEPT. 202 INDEX 404.50

DATE August 1, 1965

EFFECTIVE Immediately

Use of County Vehicles

404.50

The investigator will use the county vehicle equipment assigned to him in his official capacity and will not use the vehicle in the conduct of personal business and will follow all rules as provided generally for the use and care of county vehicles and the special exceptions as provided in those rules.



404.60  
DEPT. 202 INDEX 404.61  
DATE August 1, 1965  
EFFECTIVE Immediately

Travel

404.60

The investigator will occasionally be required to travel outside of the county and state for a variety of purposes in connection with his official duties. The same rules of procedure and conduct should apply as in his normal capacity. He shall be expected to travel when so assigned, except in unusual circumstances as may arise.

For Purposes of Investigations:

404.61

Investigators may be required to travel intra-state and inter-state over long distances to conduct investigations. The immediate necessity to gather the facts or evidence required may preclude the requirement under county rules to first obtain permission from the County Executive's Office. When such a condition exists, the investigator will obtain a clearance to proceed from the Chief Investigator. The assigned investigator, as per prior agreement with the County Executive's Office, may file a delayed request form as soon as practicable upon his return. (Authority: Letter from County Executive dated November 12, 1963, by Robert A. Sorensen, Executive Assistant.)

In all instances other than an emergency nature, the investigator will immediately complete and dispatch the Travel Request form to the County Executive's Office.

Upon approval of the Travel Request, the County Executive's Office will notify the County Controller's Office of





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the approval, and it will be the duty of the investigator to confirm with the County Controller's Office that he has received approval for travel. The investigator may now proceed to make his travel arrangements and whatever reservations may be required.

The investigator will be required to use commercial air transportation, unless for special reasons an exception would be in order.

The investigator will use the normal public transportation system at the place he is to conduct his investigation, unless the nature of the place or the requirements of the assignment indicate the need for an automobile. In the latter event, he may rent an automobile. This need should be anticipated and an estimate of cost should be indicated in the Travel Request form.

In the event that the investigator utilizes a county vehicle in an extended travel situation, he will obtain a gasoline credit card for the trip from the County Garage. Upon termination of the trip, he shall return the credit card and the charge slips to the County Garage.

The Investigator making travel arrangements for air transportation will check with the Controller's Office to obtain the name of the travel agency currently under contract for providing air reservations, and he shall make his reservation through that agency who will have previously received an authorization from the Controller's Office. The investigator



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will take the most direct routes available, and, following County Government rules, shall travel by coach--or other than premium fares.

The investigator shall remind the agency that the ticket should be written on a tax exempt basis. All air travel on official county business is exempt from Federal travel taxes. If it can be anticipated that a new ticket purchase or a repurchase of air transportation may occur, it would be wise for the investigator to obtain U. S. Treasury Department Form 731 (Tax Exemption Certificate).

Allowable expenses are in the amounts that are current and shown on the "Trip Expense Claim". Receipts are required for all lodging and other expenses in excess of \$10.00.

The investigator, in his travels, may find it necessary to incur expenses or make purchases not specified. An example of this would be the photocopying of documents. Under such conditions the investigator should pay the costs, obtain a receipt, and, upon his return, obtain reimbursement for this as an investigation expense. Where the costs are excessive, the investigator should telephone the attorney handling the case, or the Chief Investigator, for approval and direction.

Advances for expenses may be obtained by first clearing the request through the Chief Investigator. The investigator will present an estimate of the advance, plus the name of the case and the nature of the offense.



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As soon as practicable after completion of the trip, the investigator will file his Trip Expense Claim, and, upon obtaining reimbursement, he will repay any advances, less other necessary costs not covered in the Trip Expense Claim.

For Purposes of Extradition of Fugitives: 404.62

Investigators proceeding to another state for purposes of extradition will follow all of the same procedures as in the case of a trip for purposes of investigation. The exception being that upon completion of the trip, the investigator will file an expense claim with the State of California on form titled "State of California, State Agent Travel Expense Claim", in accordance with Section 1557 of the Penal Code and Section 925.4 of the Government Code. The instructions on the reverse side of the claim form will be followed to obtain reimbursement from the State Controller's Office.

The Investigator should keep in mind that before the State Controller will honor the claim, the Governor's Warrant should be completed by the agent and returned to the Governor's Office, showing the Sheriff's receipt of the fugitive.

Upon being reimbursed by the State, the investigator will arrange with the County Controller for any reimbursement to the County for costs of travel for himself and the fugitive, and he shall return any advances for trip expenses to the office fund through the Chief Investigator.



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In reimbursing the County for ticket purchases, the investigator will fill out form titled "County of Santa Clara, Affidavit and Record of Deposit". These forms are kept by the secretarial staff.

For further reference to procedures and rules in extradition cases, the Secretary of the Investigation Division will have further material in the Procedures File.

In the case of a "Waiver of Extradition", the investigator will proceed as in a normal extradition procedure. After the prisoner is returned, the investigator will:

1. Have prepared an original and a copy of "Affidavit of Magistrate",

2. This will be given to the Assistant District Attorney in charge of letters of request for agents' appointments, and he will then ask for a Nunc Pro Tunc Appointment. At the same time, the investigator will give him a copy of the signed Waiver of Extradition, plus any receipts for fees paid to the other state (if any).

3. Upon receiving the Nunc Pro Tunc Agent's Appointment, the investigator will complete the certifications thereon and return the appointment to:

Extradition Secretary  
Governor's Office  
Sacramento, California





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4. Then file the expense claim with the State Controller  
by mailing:

- a. Certificate of District Attorney
- b. The Expense Claim
- c. Loyalty Oath



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Availability While on Duty

404.70

It is the duty of the investigator to remain in contact with the Office of the District Attorney, and he will notify the Office Receptionist, wherever possible, of where he will be, how long he expects to be gone, and where he may be reached by telephone. When applicable, he will remain available for contact by radio through the County Communications Department.



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DATE August 1, 1965

EFFECTIVE Immediately

Investigation Equipment and Supplies 404.80

An Investigator, designated by the Chief Investigator, will be in charge of an equipment records and identification system, check-out and maintenance system, repair and replacement check of all electronic equipment and other investigation aids and supplies used by the Investigation staff. He will be responsible for re-ordering expendable items in short supply. All investigators will cooperate fully with the assigned investigator in carrying out his assigned responsibilities.



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Developing and Maintaining Sources of Information: 404.90

An accepted and most important responsibility of all investigators will be to develop and maintain sources of information. Each investigator should develop confidential sources of information without compromising his position or integrity and will familiarize himself with areas of information available through local, state, and federal investigation and police agencies.

He should acquaint himself with the public records available at the various levels of government, such as: clerk's offices, recorder's offices, tax offices, court records, and a variety of other public recording agencies.

He should develop sources of information from the military services, credit reporting agencies, public utilities, transportation industries, and large manufacturers. Many large private corporations, especially the utilities, maintain their own security and investigation staffs who can generally be relied upon for information when a feeling of mutual trust is developed and maintained.

The State of California maintains large investigation divisions which may be of considerable assistance as sources of information and as cooperative investigative agencies. Some of these are:





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1. The Criminal Investigation and Identification (CII)  
Division of the State Department of Justice. (The  
State Attorney General's Office).
2. The Department of Professional and Vocational Standards  
which includes investigation for problems connected  
with the following State agencies:
  - (a) Accountancy
  - (b) Barber Examiners
  - (c) Cemetery
  - (d) Chiropractic Examiners
  - (e) Collection Agency Licensing Bureau
  - (f) Cosmetology
  - (g) Dry Cleaners
  - (h) Electronic Repair Dealers
  - (i) Funeral Directors & Embalmers
  - (j) Furniture and Bedding Inspection, Bureau of
  - (k) Guide Dogs for the Blind
  - (l) Landscape Architects
  - (m) Licensed Physical Therapists
  - (n) Marriage, Family and Child Counselor
  - (o) Medical Examiners
  - (p) Nursing Education & Nurse Registration
  - (q) Optometry
  - (r) Osteopathic Examiners



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- (u) Private Investigators and Adjusters
  - (v) Psychiatric Technicians
  - (w) Psychologists
  - (x) Registered Physical Therapists
  - (y) Shorthand Reporters
  - (z) Social Work Examiners
  - (aa) Structural Pest Control
  - (bb) Veterinary Medicine
  - (cc) Vocational Nurse Examiners
  - (dd) Yacht and Ship Brokers Commission
3. Investigation Section, Department of Motor Vehicles
  4. Department of Investment, State Division of Corporations
  5. California State Real Estate Board
  6. Alcoholic Beverage Control (A.B.C.)
  7. State Narcotics Bureau
  8. Department of Employment
  9. State Parole
  10. Fish & Game
  11. State Department of Education
  12. State Athletic Control (Boxing, etc.)



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Principal Duties of Investigator II

404.100

The principal duty of the Investigator II is to investigate any and all matters to which he is assigned by the Chief Investigator. Once assigned a matter, he is to work under the direction of the attorney responsible for the case; and if it is determined that a prosecution is in order, he will, if requested, assist the attorney throughout the handling of the entire matter.

The assigned investigator may assume these duties as soon as the case is called to the attention of the District Attorney's Office, and he may work in cooperation and conjunction with the original investigating agency. Or, he may be assigned at any time that the District Attorney may deem his assistance is in the best interest of the case at issue.

Our investigators are responsible to the District Attorney and should not at any time allow themselves to be put in the position that they feel responsible to any other agency.

Their only purpose in any investigation is to ascertain the truth with regard to the matter under consideration, and if at any time they feel that this purpose is not being achieved, this should be immediately reported to the Chief Investigator and the attorney responsible for the case.

If, after investigation proceeds, investigator becomes convinced of the innocence of the defendant, he should not stop the investigation, but should continue to gather all the facts available, including those which indicate the innocence of the party being investigated.



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The Investigator will:

1. Familiarize himself with all phases of information in the case file and all other aspects of the case. He should be conversant in respect to the facts.
2. Prepare the file for immediate accessibility by breakdown and "tabbing" for:
  - a. Police reports.
  - b. Defendant's statements.
  - c. Witnesses' statements--individually "tabbed" in alphabetical order.
  - d. Expert witnesses--copies of their reports and/or their expected testimony.
  - e. Index of Evidence and Exhibits to be presented.  
List the person who will testify to the item of physical evidence or the exhibit.
  - f. Rap sheets for defendant and principal witnesses.
  - g. Medical and Hospital records and/or reports.
  - h. Military records of defendant, if pertinent to the case.
  - i. The case correspondence.
  - j. Subpoenas issued.
  - k. Miscellaneous information or special indexing and "tabbing" as may be required.
  - l. Probable and possible defense witnesses--their identities, where they may be located, and their probable testimony.





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3. A Master Index or "Face Sheet", dependent upon the size of the file, which shall show the names, ages, occupations, residence addresses and telephone numbers, and business addresses and telephone numbers of all persons connected with the case in any way.
4. Other procedures as the prosecuting attorney may require.
5. The investigator will be responsible for subpoenaing and scheduling the order of appearance for all witnesses. He will arrange for travel, housing, and other needs of the witnesses, and shall arrange for all fees and necessary expenses of witnesses, as the law may allow.
6. Arrange for the production of all charts, diagrams, maps, mechanical and other exhibits, and produce them in court at the appointed time. Operate all recording or other mechanical equipment or arrange for expert operation where applicable.
7. Re-interview witnesses and generally continue the investigation of the case and attempt to discover new witnesses, new evidence, as the case may require. Check alibis and witnesses' testimony or expected testimony as the case may require.
8. Attend all court sessions, review progress of the case with the prosecutor in charge, make suggestions for courses of action, and offer opinions where applicable.



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9. Identify all witnesses with possible criminal records, and, in the case of defense witnesses, determine the relationship (social, fraternal, or blood relationship--or other) between defendant and the witness. Attempt to determine what special interest the witness may have in the case or toward the defendant.



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Regular Investigations

404.110

The Investigator II will be required to conduct investigations covering a wide spectrum and variety which will include County Ordinances, the Penal Code, the Health and Safety Code, the Corporations Code, and other State Codes. He will occasionally be required to gather facts in respect to violations which will range from public nuisances and include business frauds generally, real estate frauds, murder, and conspiracies. He may occasionally be assigned to assist the Grand Jury or Committees of the Grand Jury in gathering facts, information, evidence, and conducting interviews regarding matters of interest to that body. He will conduct investigations in matters of special and confidential interest to the District Attorney. He will assist police and state agencies in their investigations.

The range and variety of investigations conducted by this classification is limited only by the policy as established by the District Attorney and as supervised by the Chief Investigator.



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404.121  
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Special Investigations 404.120

Applicants for Bail Bond Licensing: 404.121

Interview applicants. Obtain their personal history, with whom they will be associated, their expected business address; and, attempt to learn any involvement with law enforcement, and any special interest he will have as a bondsman. The applicant will be fingerprinted by the Sheriff's Office and the Police Department, so his criminal record will be known. Make a recommendation to the District Attorney as to whether he should approve or disapprove the application as provided by the State Insurance Commissioner's Office, which form the applicant will submit. The information obtained by the investigator will be filed in a special file maintained by the District Attorney's Office for Bail Bond Licensing.

Applicants for Certificates of Rehabilitation and Pardon: 404.122

As set forth in Section 4852.01 and other related sections of the Penal Code, and, more specifically, Sections 4852.12 and 4852.14, the District Attorney is required to make an investigation and file certain reports and recommendations regarding applicants. The Chief Investigator will designate a particular investigator to be in charge of and make all reports regarding applicants. Investigators will, nevertheless, familiarize themselves with these sections of the Penal Code and may follow a suggested procedure for investigation and





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report writing which is maintained in a procedures' file  
kept by the Secretary of the Investigation Section.

Requests for Assistance from other District  
Attorney's Offices and Police Agencies: 404.123

Any requests for assistance from other agencies should  
first be cleared through the District Attorney or the Chief  
Investigator. After receiving said clearance, proceed as  
promptly as possible to obtain the desired information.



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EFFECTIVE Immediately

Duty of the Investigator when Assigned to a Case 404.130

1. When assigned to an investigation, the investigator will give all of the pertinent identifying information about the case to the Secretary for assignment of an identifying investigation case file number or for recording of the assignment with an established case file number.

2. The investigator will also record his assignment to the case in an Assignment Book kept in the office of the Chief Investigator, in a form as detailed therein. The progress and problems with the case will then be recorded and subject to review by the Chief Investigator as he may see fit.



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EFFECTIVE Immediately

Preservation and Storage of Evidence

404.140

1. All evidence taken by the investigators, or received by them in any fashion, will be marked by the name of the investigator(s), the time, the date, and all other identifying information, in a standard form with the materials provided for that purpose.
2. The evidence will be packaged and labeled and stored in the evidence lockers. Keys to the evidence lockers will be in the possession of only those investigators designated by the Chief Investigator. The investigators designated to be in possession of the keys will not loan them out under any circumstances and shall keep the keys under their immediate control.
3. Recorded statements of defendants or witnesses will be copied onto another record and the copy record will be the only record to be used for pre-trial and out-of-court listening. The original recording will be marked as the original recording evidence, properly identified and dated. The original will be sealed in an envelope and given to the Secretary of the Investigation Section, who will maintain a record of original records being preserved for court. The original record, after being sealed, will be placed in a cabinet, under lock, and the keys to this cabinet will be only in the possession of those persons designated by the Chief Investigator. These keys will not be loaned out and will be kept in the immediate control of the designated persons.



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Arrests, Warrants of Arrest, and All Points Bulletins 404.150

Investigators of the District Attorney's Office may occasionally arrest defendants in connection with their work, and the arrests will be in accordance with the Laws of Arrest of the State of California. As a matter of policy, in all felony cases, the investigator will notify the Sheriff's Office or Municipal Police Department where the offense has been committed so they may participate in the arrest as the arresting agency. This policy has a multiple purpose. One of the purposes being to maintain a cooperative and informed rapport with the other agency and to enable that agency to report the facts of the arrest to the CII in accordance with normal statistical reporting practices.

Warrants of arrest, when issued to an investigator of this department under conditions where the location of the defendant(s) is unknown or doubtful, shall be filed with the Warrant Detail of the Sheriff's Office, and shall be accompanied by all the necessary identification information. Where it may be of vital importance to the development of the case, that a statement from the defendant(s) is necessary, and desirable, and the investigator is in control of or at least more soundly familiar with facts of the offense which would make his presence necessary at the time of apprehension, a memorandum of this fact will accompany the warrant to be filed with the Sheriff's Warrant Division, so notification may be assured.





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Under the conditions described in the previous paragraph, the investigator will prepare a suggested All Points Bulletin (if the facts appear to justify an APB) to be issued under the name of the Santa Clara County Sheriff. No All Points Bulletins shall be issued under the name of the District Attorney.

The above policy and procedure shall be diligently followed, unless excepted by the District Attorney, an Assistant District Attorney, or the Chief Investigator.



DEPT. 202 INDEX 404.160

DATE August 1, 1965

EFFECTIVE Immediately

Absence of the Chief Investigator

404.160

In the absence of the Chief Investigator, the Criminal Investigator III shall assume the duties of the Chief Investigator.



404.170  
DEPT. 202 INDEX 404.171  
DATE August 1, 1965  
EFFECTIVE Immediately

Criminal Investigation Report Writing 404.170  
Reports: 404.171

All reports will be dictated as soon as practicable and will be subject to review by the Chief Investigator. The investigator will utilize the dictating equipment furnished for his report writing and give the material to the Secretary of the Investigation Section for transcription.

Reports should be brief, unpretentious, contain all the facts of the investigation, and no opinions or personal prejudices or personal conclusions of the reporting investigator shall be expressed.

All persons mentioned in the report should be fully identified, including their relationship to the case, their full names and aliases, their business and residential addresses and telephone numbers. Include any other information that will make their position and relationship to the report clear.

The Investigation Report will not include any statements of defendants or witnesses in the main body of the report, but will refer to other sections of the report where a statement of a defendant or witness is quoted. The report may indicate that a statement was made by reference to "See Statement of Witness" or "See Statement of Defendant". Even though the statement may be only a single sentence, it will be reported separately, as noted further in this manual.



DEPT. 202 INDEX 404.172

DATE August 1, 1965

EFFECTIVE Immediately

Statements of Defendants and Witnesses: 404.172

Statements of Defendants: A defendant's statement may be taken and reported after cautioning the defendant in all cases in the following manner and style: "I wish to advise you that you need not say anything; anything you say may be used as evidence against you, and you are entitled to have a lawyer represent you at all stages."

The statement made by the defendant may be oral and reported by the investigating officer and his witnesses; it may be recorded by mechanical means in the voice of the defendant; it may be handwritten in the handwriting of the defendant after he acknowledges the fact that he was legally cautioned; it may be handwritten in the hand of the investigator taking the defendant's statement (or typed), and the investigator may ask the defendant to acknowledge the statement by affixing his signature to each page; it may be taken down by an official court reporter.

Prior to beginning any statement, the investigator should be satisfied that the defendant has been advised of his rights, that he understands this advice, and that he has exercised an "intelligent waiver" of his rights. An "intelligent waiver" is simply a clear indication on the part of the defendant that he understands his right to counsel and right to remain silent and desires to waive those rights and give a statement nevertheless.





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An official court reporter's services will not be authorized, except in special cases and only after review and approval of the District Attorney, the Assistant District Attorneys, or the Chief Investigator. The same caution will be given when using an official court reporter, and, by reason of their position, they may swear the defendant (or witness) to tell the truth.

In reporting the statements of defendants, his statement shall be kept separate--where possible--from all other factual reporting of the case, and from the statements of all other defendants, except when it may be a dual or multiple statement. It shall not be included as a part of a report which may also include the statements of other witnesses to the case.

The statement should show all of the following information:

1. Time statement starts.
2. Date.
3. Place and address where statement is taken.
4. Names, occupations, business addresses and residential addresses and telephone numbers of all persons present.
5. Each page of the statement shall be numbered, i.e.: "Page 1 of 1 page," or "Page 1 of 2 pages", or "Page 3 of 5 pages", as the statement may require.
6. The time the statement is concluded should be shown.



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Statements of Witnesses: All of the rules pertaining to the reporting of a statement taken from a defendant should be followed when reporting the statement of a witness, with the exception that the witness' statement shall not be preceded by the legal caution where there is no probability that the witness would be a defendant in the case at issue or in a related case.



DEPT. 202 INDEX 404.180

DATE August 1, 1965

EFFECTIVE Immediately

Training Program

404.180

The Chief Investigator shall designate an investigator as a Training Officer and in consultation with the Chief Investigator and other persons of the District Attorney's Staff, the Training Officer will be responsible for the formulation and execution of a program of training. The subject matter of the training program shall be in keeping with the special needs and interest of the Investigation Division.

The courses of instruction shall be for one hour, once a week, for a ten-week period, with a two-week non-instructional period between instruction periods.

The program of instruction shall be designed to include laboratory and field work where applicable.

Each investigator shall be provided a standard, designated, loose-leaf book which will contain his notes of the classes attended. The notebook will be subject to review by the assigned Training Officer.

Attendance at all courses of instruction is compulsory for all investigators unless for good cause, the investigator is excused by the Chief Investigator.

The Training Officer shall maintain a record of attendance for each investigator in the courses attended and he shall file a report of this attendance in the investigator's office personnel file.



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The Training Officer shall provide, in advance of each ten-week instruction period, a schedule of the instruction, the subject, reference and/or instructional material and the name of the instructor.





DEPT. 202 INDEX 404.190

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EFFECTIVE Immediately

Employment of Special Agents

404.190

Special Agents or Special Investigators, usually employed for secret work, will be cleared with the Chief Investigator, and they will only be employed after signing of a form of agreement as per sample contained in the Procedures File kept by the Secretary of the Investigation Division.



DEPT. 202 INDEX 404.200

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EFFECTIVE Immediately

Copying of Pornographic Material

404.200

There will usually be no necessity to have copies made of pornographic material. If the necessity of copying such material exists, the investigator will first clear through the Chief Investigator and an agreement form will be used which shall bind the reproducer to make only one copy and that they will not retain or distribute any other copies of the material. A form of agreement to be used is contained in the Procedures File kept by the Secretary of the Investigation Section.



INDEX 500.00

FAMILY SUPPORT DIVISION



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INDEX 500.00 - FAMILY SUPPORT DIVISION

FUNCTIONS

501.00

This division is responsible for all matters, both criminal and civil, relating to or growing out of family support problems; and, in addition, all criminal violations arising out of the welfare program. The duties and responsibilities are set forth below:

Legal Section

501.10

Criminal Matters:

501.11

1. Authorizes prosecution of criminal violations arising out of the welfare program and tries all felony cases that go to trial.

2. Authorizes felony complaints under Section 270 P.C., institutes extradition proceedings, and tries those felony cases that go to trial.

3. Authorizes, where proper, misdemeanor complaints under Section 270 P.C. where paternity issue involved.

Civil Matters:

501.12

1. Files Uniform Reciprocal Enforcement of Support Act cases under Section 1650-1692 C.C.P. and prosecutes such cases on behalf of plaintiffs or petitioners.

2. Files Show Cause proceedings under 139.5 C.C. and 1578 W&I Code and prosecutes all such actions on behalf of plaintiffs or petitioners.

3. Brings Civil Paternity Actions, where necessary, under 1574 W&I Code and 231 C.C.





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4. Where proper, initiates Garnishment proceedings or other actions to collect child support judgments.

Investigative Section

501.20

1. Investigates all complaints received of criminal violations arising out of the welfare program and presents the results to Deputy District Attorneys for decision as to prosecution.

2. Investigates all failure-to-provide matters referred by the Welfare Department under 1571 W&I Code, all other failure-to-provide complaints from whatever source, and takes all steps necessary to obtain support for the needy children involved as follows:

- a. Negotiates Voluntary Support Agreements.
- b. Files misdemeanor complaints, where necessary, under Section 270 P.C. where no paternity issue involved and develops evidence necessary to support prosecution.
- c. Conducts fugitive type investigation to locate subjects.
- d. Conducts investigation to support civil paternity actions under 1574 W&I Code and 231 C.C.
- e. Conducts investigation necessary to support action under Uniform Reciprocal Enforcement of Support Act and civil actions under 1578 W&I Code and 139.5 C.C.



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RESPONSIBILITIES OF KEY PERSONNEL 502.00

Attorney in Charge of Legal Section 502.10

1. Responsible to District Attorney for initiating and carrying out prosecutive procedures relating to criminal and civil actions arising out of the Family Support and Welfare programs.

2. Supervising court actions relating to Family Support and Welfare.

3. Authorizes criminal complaints and civil actions in Family Support and County Welfare Programs and tries such actions set in Superior Court.



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Supervising Investigator - Failure to Provide 502.20

1. Supervises and trains personnel assigned to the Investigation Unit in the District Attorney's Office.
2. Supervises and participates in investigations.
3. Assigns cases, advises, and works with investigators in performing investigations of suspected violations of laws, rules, and regulations.
4. May participate in the more difficult criminal and confidential field investigations.
5. Ensures that complete oral and written reports are submitted on all cases investigated by subordinates.
6. Reviews and evaluates reports and advises his superiors as to the status of all cases and the course of action to be taken in each.
7. Assists a superior in planning and directing the investigation program of the unit.
8. Evaluates the performance of staff members and makes reports and recommendations pertaining thereto.
9. Maintains liaison with other law enforcement agencies, probation, welfare, and other public agencies.
10. Assembles, evaluates and prepares reports on statistical data of activities of the unit.
11. Performs related work as required.



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POLICIES AND PROCEDURES 503.00

Failure-to-Provide Procedures 503.10

1. Interview with Complaining Witness:

Whether the C/W has been referred over from the Welfare Department or comes in on her own volition, it is very important to get all pertinent information on the first interview.

a. Use Form 5DA.

b. If child is result of meretricious relationship between the parties, take a paternity statement. Use Paternity Statement Guide. If such C/W is not on welfare, discuss immediately with deputy district attorney.

2. Interview with Defendant:

a. In addition to background data including address, employment, Social Security No., etc. (See Form 5DA), care should be taken to explore D's financial circumstances - earnings, pensions, bonuses, investments, property and obligations - and work out voluntary support agreement, if possible. Use Form 9DA. Insist that payments be made through Adult Probation Department. Caution D that any voluntary agreement cannot change an existing civil order.

(1) If C/W is on welfare and D is under civil order to pay child support, discuss with deputy district attorney regarding contempt action against D (Sec. 1578 W&I).





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(2) In any case, if D is already under a civil order in Santa Clara County, discuss with deputy district attorney advisability of having the order modified to call for C/S payments through Adult Probation Department and thereafter District Attorney can enforce by contempt or garnishment under Sec. 139.5 CC.

b. If D denies paternity, complete information regarding his association with C/W should be obtained. Use Paternity Statement Guide, and Investigator's Manual. Have in front of you C/W's interview on paternity. Determine if D will submit to blood and polygraph tests. Discuss with deputy district attorney and prepare to conduct investigation necessary to corroborate or disprove C/W's statements (See Investigator's Manual). When civil paternity action is authorized, stenographer will prepare Petition on basis of information furnished by investigator on "Information Sheet - Civil Paternity Action"

c. If D admits paternity of child resulting from casual or meretricious relationship, discuss with deputy district attorney advisability of his preparing a formal paternity agreement rather than usual Voluntary Support Agreement.

d. Where D uncooperative, the following should be considered:

(1) File 270 PC (misdemeanor) Complaint. This complaint may be filed without consulting deputy district attorney unless



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there is some question of D's ability to support or an issue of paternity. We must be able to prove obligation to support and willful failure to support.

(2) Complaint under Sec. 166.4 PC where D is in non-compliance with an existing civil order.

(3) Civil enforcement of support by deputy district attorney.

(a) If C/W is receiving welfare and there is a civil order for support in Santa Clara County or an adjoining county, the deputy district attorney can represent the C/W in the enforcement of the order by contempt or garnishment proceedings.

(b) Whether C/W is on welfare or not, if C/S payments by civil order under Sec. 139.5 CC are made payable through our Adult Probation Department, the deputy district attorney can represent C/W in the Order's enforcement in same manner as above.

(c) If D is located in another county of California, deputy district attorney may file a reciprocal support proceeding in same manner as if D were in another state. Use "Information Sheet - Reciprocal".

(d) Where there is an issue of paternity, the District Attorney may file a civil paternity action on behalf of the child (See above paragraph 2b) and obtain a support order in the proceeding.



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3. Defendant's Whereabouts Unknown:

Consider 270 PC Complaint and conduct fugitive-type investigation to locate (See Investigator's Manual).

4. Defendant in Another State:

Discuss with deputy district attorney whether to file:

a. Felony 270 PC Complaint. When D is arrested, extradition must be expedited. Affidavit of investigator in support of extradition will be dictated by deputy district attorney from information supplied by investigator on "Information Sheet - Extradition", or

b. Civil reciprocal action. If this proceeding is authorized, stenographer prepares the Petition on the basis of information furnished by investigator on "Information Sheet - Reciprocal".



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Procedure Regarding Fraud Referrals

503.20

All Fraud Referrals received from an anonymous source, informant, police department, etc., will be referred to the County Welfare Department, Recover and Legal Service Officer, in order that he may check the case record to ascertain as to whether or not the facts alleged in the fraud report are known to them.

Whenever an investigator receives a fraud report from one of the sources described above, he will make a fraud referral and instruct his secretary to give all copies of the referral together with the file to the Fraud Secretary. Referrals will then be placed in the Suspension File, pending clearance from the Recover and Legal Service Officer.

The purpose of the above procedure is to conserve the investigator's time by eliminating investigations on cases where the alleged facts are already known to the Welfare Department and are taken into consideration in the ANC grant.

When any information is required on a fraud case, please contact the Recover and Legal Service Officer, regarding the information rather than contacting the individual social workers.

Fraud Cases & Reciprocal Cases: Both of the above type cases are maintained in one file; however, they should be separated in the file. Please exercise the most care in your filing procedure to insure that the Fraud and Reciprocal matters are maintained separately in the files.





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Fraud Procedure

503.30

In order to keep our statistical records straight, the following procedure will have to be closely adhered to:

1. Do not begin working on a fraud case until a fraud referral has first been typed.
2. All Fraud Referrals received from an anonymous source, informant, police department, etc., will be referred to the County Welfare Department, Recover and Legal Service Officer, in order that he may check the case record to ascertain as to whether or not the facts alleged in the fraud report are known to them. (Refer to Sec. 504.20)
3. Do not work on fraud cases that are being held in suspense until they are cleared through the Recover and Legal Service Officer or directly with the social worker.

In the event that a fraud case being held in suspense is cleared through the social worker so that it appears there actually is a fraud and the case need no longer be held in suspense, advise the Fraud Secretary so that she may transfer the case from the Suspense Book to the active fraud file.

Filing of Complaints:

503.31

Prior to the filing of any complaint, a typewritten Synopsis of Facts will be made by the investigator and presented to a deputy district attorney, who will make the decision as to whether or not to issue a complaint. The synopsis of facts will then become a part of the file and remain there. (A copy of the synopsis will be given to APO when it is requested).



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1. After a complaint is obtained, give file to Fraud Secretary for processing of complaint.

2. Fraud Secretary will provide the Recover and Legal Service Officer, CWD, with a copy of the complaint together with supplementary information which she will obtain from the Synopsis of Facts.

3. After processing, the case will then be returned to the investigator so that he may complete the Statistical Sheet with regard to the circumstances of the case; that is, type of fraud, criminal record of man in the home, etc. Upon completion, the Statistical Sheet will be returned to the Fraud Secretary so that she may file it in the proper place.

Court Procedure:

503.32

1. Investigator signing the complaint will be the one who will be responsible for its presentation in court. This responsibility will carry over even though the investigator may have been rotated back into his district.

2. The Fraud Secretary will maintain a "Record of ANC Fraud". (This is an individual record which is kept on each case after a complaint has been issued. The current status of the case and its final disposition are indicated.)

3. The investigator responsible for following the complaint to its trial and conclusion will report to the Fraud Secretary the current development in the case such as, when defendant changes plea to guilty or the trial is continued, etc.



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Closing of Cases:

503.33

A case is closed under the following circumstances:

1. When an investigator is satisfied no fraud exists.
2. When the suspect is no longer receiving aid and it appears to be expedient that the matter regarding fraud not be further pursued.
3. When the suspect has been charged with a violation and a final disposition of the charge has been made.
4. A case may be closed any time during the month that closing appears to be proper; however, do not remove the case from the Fraud Book until the end of the month count. At the end of the month all closed cases are then removed from the Fraud Book and after the count has been made, they are filed in their respective files. Those cases in which a complaint has been filed will not be removed from the book until there is a final disposition made. In this case they are not removed from the Book until the count at the end of the month.
5. At the end of the month when a case is closed, the face sheet is removed from the Active Fraud Book and filed in the Inactive Fraud Book.



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Felony 270 PC Cases

503.40

Whenever notice of a Reciprocal Order is obtained, recall all outstanding 270 warrants, that is, both misdemeanors and felonies, and have them dismissed.

In the event a certified copy of complaint and warrant are in the foreign jurisdiction, send notice to that jurisdiction requesting return of said documents and advise them that we are dismissing the complaint.

Investigator Personally Handling Case

503.41

Whenever a Felony 270 PC is issued and the investigator wants to handle the matter personally, please use the following procedure:

1. Obtain the original warrant and two certified copies of the complaint and warrant.
2. Forward to the jurisdiction in which the defendant may be apprehended, one certified copy of the complaint and warrant and also the defendant's description on the Sheriff's Office Warrant Report form.
3. Forward to our Sheriff's Office the original warrant and a certified copy of the complaint and warrant and a completed Sheriff's Office Warrant Report form.

Indicate on the Sheriff's Office Report form the fact that you have already forwarded the certified copy of the complaint





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and warrant to the jurisdiction in which the defendant may be apprehended. This is so our Sheriff's Office will not duplicate the process.

The reason for having the original felony warrant on file with the Sheriff's Office is in the event the defendant is located in California and it comes to the attention of our Sheriff's Office, he may be arrested on said warrant.

The reason for having an additional certified copy of the complaint and warrant with our Sheriff's Office is in the event that the defendant moves from the out-of-state jurisdiction "A" to the out-of-state jurisdiction "B" and the information becomes available to our Sheriff's Office, they will be able to file the necessary documents in the new jurisdiction in order to effect his apprehension.



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Voluntary Agreements & Continuances of 270 PC Trials 503.50

Whenever a 270 PC trial is continued on the basis that the defendant agreed to contribute child support voluntarily through the Adult Probation Department, be sure to advise APD on the Referral of the specific facts involved in the case.

The reason for this is as follows:

A case was continued for a period of 90 days on the basis that the defendant would contribute voluntarily through APO. The defendant made one contribution. When the case was re-scheduled again for trial, the defendant failed to appear and a bench warrant was issued for his arrest. The defendant was later arrested on the bench warrant and when brought before the judge, stated he did not understand why he had been arrested because he had made arrangements to contribute on a voluntary basis through APO. The judge then checked with APO, and although the case was not in good standing, it had not been referred back. Therefore, all that APO could do was advise them that there was an agreement in force. As a result, bail forfeiture was set aside and the case was dismissed on the court's own motion.

All of the above was brought to the attention of the investigator by the bail bondsman, who casually mentioned it to him. If it had not been for the bail bondsman, a greater period of time would have elapsed before we would have again discovered this case.



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EFFECTIVE Immediately

Social Security Number "Tickler File" (Bureau of CII) 503.60

Due to the press of work and the shortage of personnel, the Bureau of CII has discontinued the maintenance of the Social Security number "Tickler File" for the fifty-eight counties on ANC referrals to the Department of Employment.

This has necessitated that our office maintain, by the subject's Social Security number, a "tickler file" in our office, instead of submitting a CII -60 (pink) to the Bureau of CII. The "Request for Information from the Department of Employment" punch card form DE 4773, will be sent in as before.

Our office will continue to submit the DMV and CII copies as usual; the Social Security number should be included on these forms when known.

When the Bureau of CII receives the "Department of Employment's Wage and Claim Abstract", DE 507, and the "Address Slip", DE 4989, back from the Department of Employment, they will immediately forward them to our office for us to match in our "tickler file" for our proper DA case number.



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Investigations, Arrests, Warrants of Arrest,  
All Points Bulletins

503.70

See section 404.150 of this Manual.





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Paternity Type Blood Tests

503.80

Paternity type blood tests, blood samples will be drawn by the Central Medical Laboratory located at 10 South Morrison, San Jose. They have indicated that they will deliver the blood samples to our Laboratory of Criminalistics. Therefore, there is no need for the investigators to call for the blood.



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503.91  
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Case Assignment Card System 503.90

Use of Assignment Cards: 503.91

The Assignment Card consists of a 3x5 NCR card typed in triplicate containing the case name, case number, the investigator to whom the case is assigned, and the date of the assignment.

In the interest of brevity, further reference to these cards will be: Card #1 - original, Card #2 - first copy, Card #3 - second copy.

Card #3 is filed alphabetically in a Visible Index. When the case is closed, the card will be removed from the Visible Index and discarded.

Card #1 is to be given to the investigator to file alphabetically in a card box and retain it on his desk for reference. At any time a count can be made of the cards in order to ascertain the exact number of cases the investigator is handling, thus making possible a more equal distribution of cases. When the case is closed by the investigator, the card (#1) is removed from his box and retained by the Supervisor for further statistical purposes.

Card #2 will be attached to the inner lower blank corner of the case. This will provide for immediate identification of the investigator handling that case.

Closing a Case: 503.92

Whenever a case is to be closed, the investigator to whom the case is assigned will remove his card (#1) from his



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alphabetical index and indicate on his card and the card attached in the case (#2), the reason for closing the case, such as "Defendant on Probation" or "Voluntary Agreement forwarded to APO", "Couple reconciled", etc. The investigator's card (#1) will then be attached to the case folder and routed through clerical so that the Assignment Card can be pulled from the Master Index. The investigator Assignment Card (#1) will then be forwarded on to the Supervising Investigator and the case returned to file. When a case is reopened, a complete new set of Assignment Cards will be made as above described. The new copy of the Assignment Card (#2) will be placed in the case over the one indicating the case was closed.

Advantages of Using Case Assignment Card System: 503.93

1. It would be possible to determine the exact number of active cases at any time.
2. It would provide for a more even distribution of cases among investigators.
3. It would provide the investigator with the names of his active cases.
4. It would minimize the possibility of a case being returned to file accidentally and lost from sight.
5. It would reduce the needless pulling of closed cases because of notices received from CWD indicating change of address, etc. (The case may have been closed because defendant was on probation or signed a voluntary agreement and



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the whereabouts of the complainant is no longer of any importance to the investigator.

6. It would eliminate the needless pulling of a closed case ticklered months in advance for further review when during the interim the case had been closed for one reason or another.

7. The information contained on closed Assignment Cards could provide for further statistical studies necessary but not feasible under the present system.





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Foster Home Cases

503.100

The social worker in the Welfare Department will now sign the 270 PC complaint whenever one is indicated in a foster home case.

The procedure to use is as follows:

1. The D.A.'s Office will insert the name of the defendant and children on the 270 PC complaint.

2. The 270 PC complaint (original and four copies) along with a 14 DA-I explaining the necessity of issuing the 270 PC will be forwarded to County Welfare Department, Attention Recover and Legal Service Officer.

3. The Recover and Legal Service Officer will identify the Social Worker supervising the case, insert the Social Worker's name as the complainant, date the complaint, obtain the Social Worker's signature, and return the original and copy of the 270 PC complaint to this office.

4. This office will then process the complaint.

The Recover and Legal Service Officer will also place on the lower portion of the complaint, "Mail to: Recover and Legal Service Officer, c/o Santa Clara County Welfare Department".

This is a notice to the Municipal Court Clerk, instructing her where to mail the notices of trial. Upon receipt of the notice, the Recover and Legal Service Officer will make certain the Social Worker or supervisor has notice of the trial.



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DATE August 1, 1965

EFFECTIVE Immediately

Supplementary Information Sent to Sheriff's Office  
(Re: Outstanding 270's) 503.110

After a 270 PC complaint has been issued and additional information comes to the attention of the investigator, the most expeditious way to impart this information to the Warrant crew would be to telephone the information to the Warrant Desk; however, follow up all such additional information with a memorandum containing the same information and direct the memorandum to the attention of the sergeant of the Warrant Detail.

The sergeant of this unit will then be responsible for directing the information to the proper source and will also instruct his personnel to indicate on the memorandum we send to them the results obtained. For example, if the information given to them now indicates the defendant is residing in another county, the warrant will be sent to the other county. When it is returned by the other county, indicating the defendant cannot be located at the address given, the memorandum on which the information was sent will be returned with the notation that the defendant could not be located. This should save time for the Warrant crew and for the investigator.



DEPT. 202 INDEX 503.120

DATE August 1, 1965

EFFECTIVE Immediately

Notification to Welfare Department

503.120

Whenever a 270 PC complaint is to be issued, felony or misdemeanor, where the social worker signs as the complaining witness at the bottom of the complaint, information should be provided so that the court will send notice to the attention of the Recover and Legal Service Officer, LESU, Welfare Department, 55 Younger Street, San Jose, California.

A copy of the complaint, felony or misdemeanor should be directed to the attention of the Recover and Legal Service Officer so that he can maintain control and assure us of the presence of the complaining witness, should the case go to trial.



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Violators of 270 PC Work Furlough Program

503.130

The Rehabilitation Officer at the Santa Clara County Jail Farm will provide us with a list of the inmates in the County Jail Farm on the Work Furlough Program that are there as a result of violation of Section 270 PC, or a denial of probation on a violation of 270 PC.

Upon receipt of such notice, which will advise of the inmates' out dates and income, the investigator will then take the following action:

1. Prepare the Voluntary Agreement form (9 DA-1) and mail it along with form 8 DA-1 to the inmate.
2. At the same time, send notice by way of a memorandum to the Rehabilitation Officer, Santa Clara County Jail Farm, advising him of the amount of demand made upon the inmate and the date the contributions are expected to begin.
3. Tickle the case for the return of the agreement.
4. Take appropriate action when the agreement is returned or in the event the inmate fails to return the agreement.





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DATE August 1, 1965

EFFECTIVE Immediately

Reciprocal Support Cases

503.140

When reviewing files where reciprocals have been filed in this office, write a memorandum to the attorney in charge with a copy to Adult Probation Office, should the status of the case change in any way that would affect the reciprocal, as follows:

1. Plaintiff moves out of the county.
2. Where a defendant returns to the State and is prosecuted and convicted on a 270 PC complaint and placed on probation.
3. Where Welfare Department reports that the case is closed as the child is over 18 years of age.

After a reciprocal has been filed by this office, all correspondence relating thereto to the responding state officials should come from the attorney in charge.



INDEX 600.00

LABORATORY OF CRIMINALISTICS



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INDEX 600.00 - LABORATORY OF CRIMINALISTICS

<u>FUNCTIONS</u>	<u>601.00</u>
<u>Mission</u>	<u>601.10</u>

The objective of the Laboratory of Criminalistics is to provide scientific support to law enforcement in the County of Santa Clara in connection with physical evidence examination and evaluation.

<u>Characteristics</u>	<u>601.20</u>
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It is characterized by a modern laboratory employing those instruments and resources of chemistry, physics, and other related basic sciences which find application in the peculiar physical evidence problems of law, law enforcement, and the administration of justice.

Personnel of the criminalistics profession are characterized by special training in the basic disciplines of science and their application in the consideration of law enforcement problems. Specific applications include examination, analysis, and evaluation of objects of physical evidence as well as consulting and advice to peace officers and trial attorneys.

Personnel habitually remain abreast of new developments by reading professional journals and attending periodic scientific meetings, symposia, and seminars.

Capital outlay is limited to instruments which are used sufficiently to more than repay the cost of leased or per case fee consulting of commercially available facilities. When the

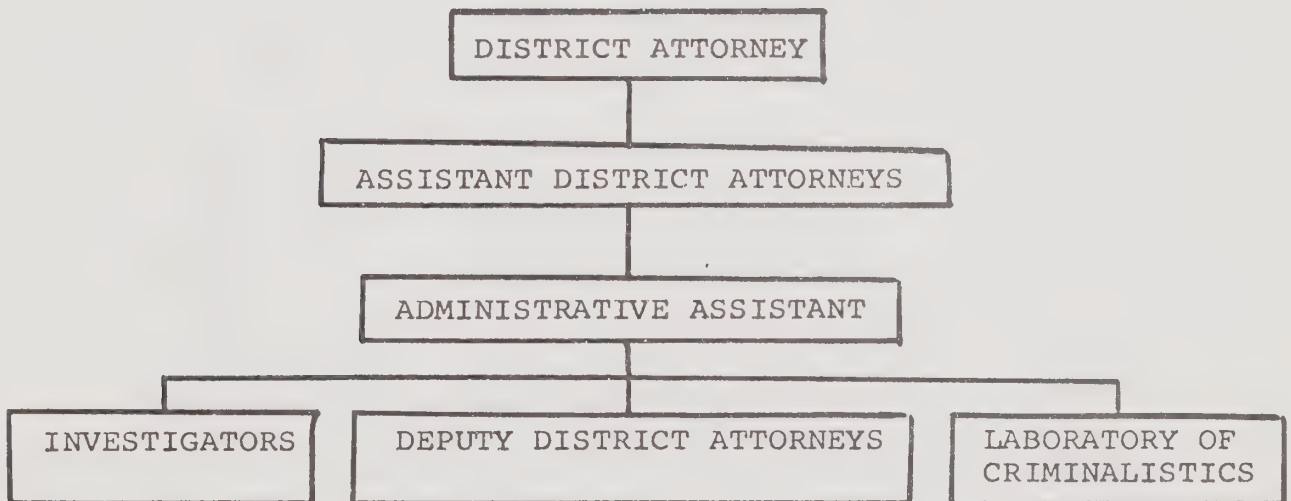


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need arises for professional work beyond the scope of County facilities, it is engaged on a contractual or fee basis.

Organization 601.30

The Laboratory of Criminalistics is a division of the Department of District Attorney, and is related as indicated by the following organization chart:







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The following is a presentation of the organization for supervisory responsibility. As laboratory operations grow in accordance with the forecast of population increase, the laboratory operations will develop and will have to change from time to time to meet new requirements.

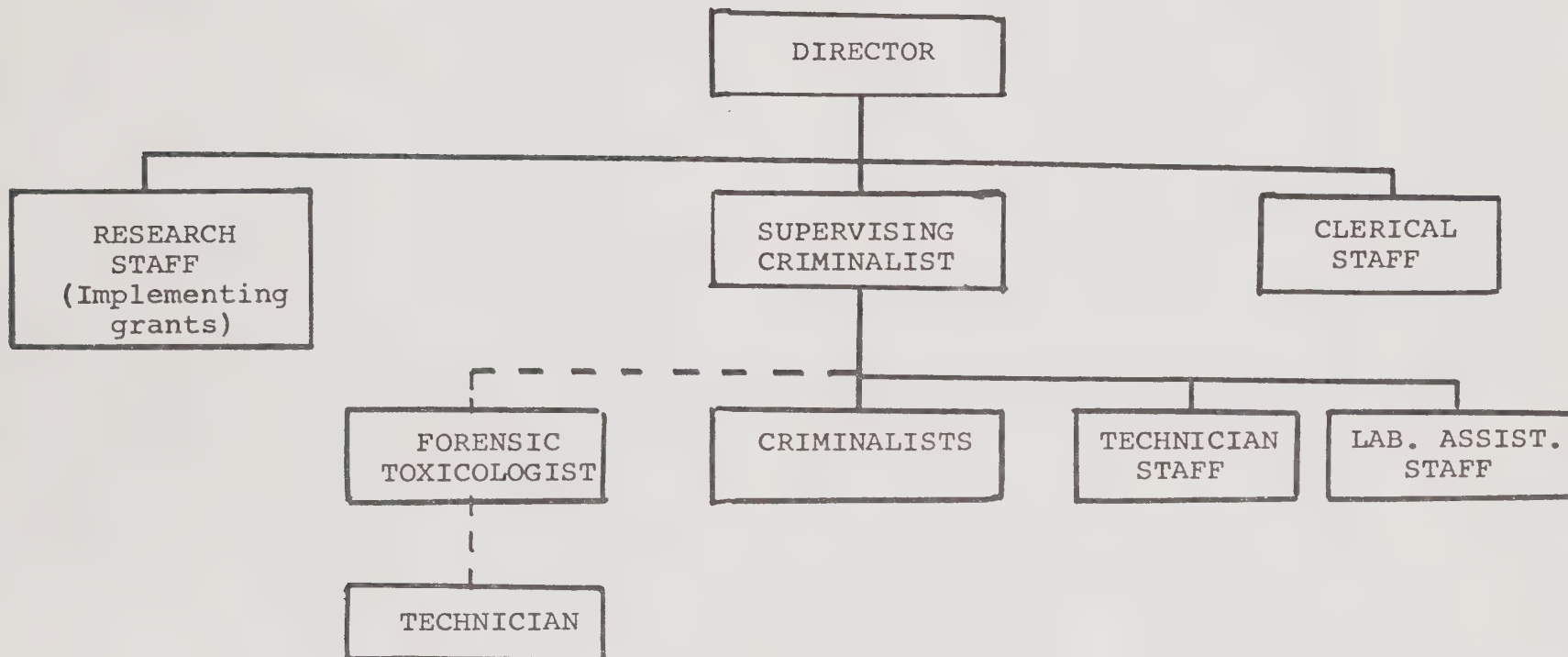
The work of a criminalistics laboratory is characterized by the fact that the director and criminalists have the primary responsibility of case work. In order to accomplish the case work systematically and in time for law enforcement application, it is necessary to assign the staff administrative functions to suit the particular abilities and special areas of knowledges of available personnel without regard to grade of criminalist.

Staff assignments of other special projects and studies are made from time to time for training and development.

There is a cooperative interplay among the staff on all case work and administrative support; however, the responsibility for administrative functions of a continuing nature is clearly fixed by the organizational chart and the staff supervision chart.



ORGANIZATION CHART  
OF THE LABORATORY OF CRIMINALISTICS



LEGEND

\_\_\_\_\_ Current  
- - - - - Projected

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RESPONSIBILITIES OF KEY PERSONNEL 602.00

Director 602.10

1. Responsibility for the organization and management of a major crime laboratory operation. Provides for an operation adequate for the needs of the entire County.

2. Determines requirements for methods, equipment, facilities and personnel in a growing situation.

3. Sees to the conduct of in-service training so that operations will remain abreast of current developments.

4. Determines policy and procedure concerning standards of accuracy, precision, and applicability of methods.

5. Determines necessity for and extent of research and development.

6. Performs all personnel work.

7. Reviews case reports and correspondence.

8. Determines security requirements and policy.

9. Maintains liaison with other agencies and department at the Chief or Director level.

10. Supervises and reviews all staff activities.

11. Participates in the general practice of criminalistics concerning complex cases and reinforces where depth of skill and experience are applicable.



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12. Is District Attorney's Staff Consultant in all of the aspects of physical evidence programs. Recommends methods of approach to the solution of trial problems concerning physical evidence.





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Supervisor of Operations

602.20

The Supervisor of Operations has the responsibility to supervise the Director's policies and execute details concerning the following:

1. Assignment of technical staff to cases, and review of status of cases.
2. The evidence receiving and releasing procedure.
3. The extent of tests to be performed on cases.
4. Compliance with technical methods and procedures.
5. The overall aspects of the Drinking Driver Enforcement Program.
6. Field investigations.
7. Personnel disciplines such as working hours, efficiency of use of time, general laboratory housekeeping schedules for criminalist staff, technicians and laboratory assistants.
8. Keeping of records concerning status of cases, accumulation of data, experience and case control.
9. Determines that court appointments for laboratory personnel are properly scheduled and coordinated.
10. Adjusts and coordinates workload among technical and personnel to insure equitable use of time and effort.
11. Assumes the duties of Director in the absence of the latter.



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Supervisor of Logistics

602.30

The Supervisor of Logistics has the responsibility for supervision of the Director's supply policies, and to make studied recommendations concerning:

1. The estimation of annual requirements of expendable supplies, equipment and services necessary for the maintenance and operation of the criminalistics operation.
2. Preparation of draft of the annual budget.
3. Coordination of planning for capital outlay expenditures.
4. Purchasing and contracting activities.
5. Continuously coordinating expenditure and budget matters.



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Supervisor of Services

602.40

The Supervisor of Services has the responsibility for supervision of the policies of the Director concerning:

1. Technical maintenance of laboratory instruments.
2. Liaison with other county services upon which the criminalistics operation is dependent.
3. Determination and execution of periodic and preventive maintenance schedules.



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Supervisor of Technical Photography

602.50

The Supervisor of Technical Photography has the responsibility to supervise all of the policies concerning:

1. The determination of annual photographic supply requirements.
2. Planning for future requirements concerning processes, procedures, and techniques in technical photography.
3. Densitometric control testing of all photosensitive materials in use and maintaining current technical information concerning same.
4. Experimental exploitation of new materials and media.





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POLICIES AND PROCEDURES 603.00  
Concept of Operation 603.10  
External: 603.11

Cases are submitted by the various law enforcement agencies of the county. The laboratory does not solicit cases, but receives them in a consulting capacity. Assistance is rendered in several ways:

1. Consulting advice to the investigator.
2. Examination of submitted items.
3. Evaluation of examined items for further investigation or trial.
4. Design of demonstrative exhibits for trial.
5. Execution of visual aid techniques in evidence presentation in the courtroom.
6. Coordinates with other agencies and facilities for services beyond scope of local operation; i.e., contractual services with professional sources.
7. Maintains technical supervision over county-wide drinking driver enforcement program.
8. Conducts training of peace officers and district attorney trial staff in connection with physical evidence appreciation.
9. Director serves as scientific staff advisor to District Attorney and Scientific Security Advisor to Director



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of Medical Institutions, member of Poison Control Center  
Advisory Committee, Deputy County Clerk.

10. Recommends procedural changes and inauguration of  
new methods when applicable to police agencies.

Internal: 603.12

Cases are received by Supervisor of Operations who  
determines scope of testing and assigns the case to a staff  
criminalist. Detailed policy guidance is given this super-  
visor by the Director. Upon completion of work and report, the  
Supervisor of Operations inspects the work and approves the  
work product. Director reviews completed work and approves.

Staff administrative assignments are indicated by  
Index 602.00.



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Precautions in Receiving Evidence 603.20

Preliminary Considerations: 603.21

A. "Who" is submitting the case as distinguished from  
"who" is delivering the case.

B. Can the submitter clearly substantiate that it is a  
bona fide case for laboratory examination:

1. JURISDICTION - Is it from a law enforcement agency  
of the area of the County of Santa Clara. If not an enforcement  
agency, is it some other taxpayer-supported agency which has  
no other means to do the examination which is peculiar to the  
capabilities of a criminalistics operation.

2. OUTCOME POTENTIAL - Is it a case which can be  
pursued further on the basis of a successful laboratory exami-  
nation; i.e., will some useful action follow the laboratory  
examination such as further investigation, issuance of complaint,  
etc.

3. Is the material being submitted for examination  
appropriate, sufficient, uncontaminated or unaltered, and  
capable of examination.

4. Is comparison material submitted of an adequate  
nature.



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5. Is the criminalist able to suggest other ideas which would be productive of physical evidence or exemplar material in the case.

6. Is there a "time" value to the case or to any items of evidence.

Applicability: 603.22

A. There must be potential for results and successful outcome, or some useful purpose must be served by the acceptance of any case or evidence. Inquiry must be made of each presenter of evidence as to possibility of useful outcome. No perfunctory testing will be done.

1. Animal Poison Evidence:

Dog poison evidence will be received only if the submitting officer has a suspect against whom a complaint will be issued if poison is determined to be present.

If this requirement is not met, no evidence will be received in connection with this type of case, unless ordered by the director.

Condition of Evidence: 603.23

A. In general, the laboratory will not receive any item that might be a safety, health, or technical hazard.

1. Blood Stained Clothing:

No wet clothing will be received. It is the submitting officer's responsibility to dry out all materials





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before submitting to the laboratory. No facilities are available for drying.

2. Autopsy Specimens:

All specimens of biological material must be submitted in properly sealed containers, preferably plastic freezer bags (see Annex for instructions to Coroner). No dead animals will be received. Animal specimens will also be submitted in sealed packages. Upon receipt, they will be placed in the freezer with proper identification, unless they are to be immediately analyzed.



INDEX 700.00

COMPOSITION OF CLERICAL DIVISIONS



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INDEX 700.00 - COMPOSITION OF CLERICAL DIVISIONS

LEGAL DIVISION

701.00

There are currently twenty persons in the Legal Division Clerical Section in the following job classifications:

1. Senior Legal Stenographer (2)
2. Legal Stenographers (7)
3. Senior Stenographer (4)
4. Intermediate Stenographer Clerk (1)
5. Intermediate Typist Clerk (4)
6. Receptionist (2)

The Clerical Section is responsible for the following:

Stenographer Section

701.10

1. Take dictation of orders, motions, search warrants, affidavits, briefs, instructions to the jury, reports, and other legal documents and correspondence.
2. Put general information into proper legal form.
3. Compose legal documents for which general forms are available, such as certifications to Superior Court, witness claims, mileage claims, and various other documents.
4. Type criminal complaints for all arresting agencies in the County.



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Calendar Section

701.20

Superior Court:

701.21

1. File all new holdings, check files and police departments for prior felony records and type informations.
2. Prepare a criminal calendar for arraignment of defendants in Superior Court.
3. Keep a running trial calendar of felony cases.
4. Post all calendars (Probation, Plea, Arraignment, Information and Trial) in felony record book, on disposition sheet and on card for Bureau of Criminal Statistics.
5. Prepare monthly report for Bureau of Criminal Statistics on all information filed.
6. Prepare monthly report for Bureau of Criminal Statistics on all felony cases disposed of in Municipal or Justice Courts.
7. Type letters and legal documents such as complaints, indictments, subpoenas, jury instructions, etc., when called upon to do so.

Municipal Courts:

701.22

Legal Stenographer:

1. Acts as secretary to the Administrative Assistant, which involves taking dictation, coordination of all personnel transactions in the District Attorney's Office and Laboratory of Criminalistics.
2. Assists in preparation of annual budget and other specific jobs.





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3. Supervises Intermediate Stenographer concerning the daily Municipal Court Calendar for all Municipal Courts in Santa Clara County, with the exception of Palo Alto-Mountain View Municipal Court.

4. Assists, whenever necessary, the Calendar Clerk, and takes over the Municipal Court Calendar in her absence.

5. Works with Administrative Assistant on payroll and checks for accuracy as to salary increases, changes in personnel, additions or deletions.

6. Keeps attendance roster and processes payroll and personnel forms in the absence of the Administrative Assistant.

7. Makes photocopies of letters, etc., at request of Administrative Assistant.

8. Processes all mail, including inter-departmental correspondence--opening, stamping contents with date received, pulling the necessary files and referring to proper attorney.

9. On occasion, works with Investigation Forms with the Administrative Assistant on specific FTP cases.

Intermediate Stenographer Clerk:

1. Coordinates notices received from all Municipal Courts in the County of Santa Clara, with the exception of Palo Alto-Mountain View Municipal Court, as follows: Checks "Case Notices" received from court in card index files; pulls files for attorneys and types index cards where necessary, and a disposition sheet for each file; enters cases on the Daily Municipal Court Calendar; distributes files to attorneys.



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2. Types various forms with reference to the calendar.
3. Pulls files for jury trials and court trials once a week in addition to case notices received in mail for San Jose Municipal Court.
4. Is responsible for keeping calendar accurate at all times.
5. Answers questions on the phone from the public and from private attorneys regarding the status of cases on the calendar.
6. Advises investigators of the date and time of trial of all 270 PC (non-support) cases.



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File Section

701.30

1. Index, card, and file complaints, traffic citations, blood alcohol envelopes and reports, labor citations, laboratory reports, search warrants and indictments.
2. List all complaints not typed in the District Attorney's Office.
3. Pull files, upon request, for all attorneys and stenographers, with the exception of the Calendar Clerk for Municipal Court.
4. Pull files for trials and traffic matters.
5. Answer numerous telephone calls requesting information and refer calls properly when necessary.
6. File correspondence, subpoenas, informations and various other papers into proper files.
7. Refile files pulled for court and traffic matters.
8. One Clerk responsible for checking jury lists against master card file and pulling all cards found on jurors; types information from cards on to a list for the use of the attorney handling the case; refiles all cards; types a jury box form to accompany the jury list and information sheet; makes a jury card for each person serving on the jury and for those excused by the People upon completion of a trial; adds new information on a juror's previous card; checks telephone books upon request and city directories for names of spouses of jurors serving on murder trials; answers telephone and intercom lines; pulls files for attorneys upon request; assists file girls whenever possible.



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Receptionists

701.40

1. Interview all people who come into the office of the District Attorney.
2. Determine if matter comes under the jurisdiction of this office, and if so, arrange for interview with an attorney or criminal investigator.
3. If matter does not come under the jurisdiction of the District Attorney's Office, refer the party to proper department or private attorney.
4. Answer telephone inquiries regarding doubtful organizations, small claims matters, bankruptcy, adoptions, restraining orders, etc., and refer properly.
5. Know the whereabouts of all attorneys and criminal investigators at all times--taking messages when they are out of the office.
6. Place calls to various police departments to verify if a police report has been made.
7. Place long distance calls upon request.
8. Arrange interviews with attorneys for people seeking mentally ill or inebriacy commitment to Agnews State Hospital.
9. Check with file clerks to determine if we have certain matters in our files.
10. Make certain an attorney will be on early morning and lunch hour duty.





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CRIMINAL INVESTIGATION SECTION

702.00

There is presently one Senior Stenographer for the Criminal Investigation Section. She is responsible for the following:

1. Take dictation of Investigation Reports; statements of various suspects/defendants, complaints, and witnesses; and miscellaneous correspondence, including cite letters, from the Criminal Investigators. Transcribe and type this dictation.
3. Type file cards for all suspects/defendants, complainants, witnesses, and victims mentioned in each investigation report.
4. Maintain investigation files, index book describing files, and locate and deliver various investigation files when requested.
5. Complete, type, have signed, and send to proper authorities, Trip Requests and Expense Claims for Criminal Investigators.
6. At direction of Criminal Investigators, type subpoenas and service of subpoenas.
7. Keep monthly tabulation of Criminal Investigation cases handled.



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FAMILY SUPPORT DIVISION

703.00

There are currently fourteen persons in the Clerical Section in the following job classifications:

1. Legal Stenographer (6)
2. Senior Stenographer (2)
3. Intermediate Stenographer Clerk (1)
4. Intermediate Typist Clerk (1)
5. Intermediate Clerk (2)
6. Receptionist (2)

The Clerical Section is responsible for the following:

Reciprocal Section

703.10

1. Process actions under Uniform Reciprocal Enforcement of Support Act as received.

a. Make up files and prepare index cards relating thereto.

b. File necessary papers with Court Clerks.

c. Prepare Show Cause papers as required. Obtain Judge's signature and calendar for court hearings.

d. Prepare and mail form letters and documents as required.

2. Prepare petitions, orders to show cause, writs, affidavits, supporting declarations, orders, judgments, stipulations, jury instructions, and related documents and file and calendar for hearing civil proceedings under 139.5 Civil Code, 1578 W&I Code, 1574 W&I Code and 231 Civil Code.



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3. Prepare and send form letters as necessary in the supervision and follow up of all civil actions.

4. Take and transcribe dictation of two Deputy District Attorneys assigned to the Family Support Division and perform all other secretarial duties for the attorneys.

5. Tabulate and prepare statistical reports relating to civil actions filed.

Investigative Section

703.20

1. Prepare and maintain files and indexes relating to child support and welfare frauds, including the routing and filing of correspondence.

2. Prepare criminal complaints as directed.

3. Prepare Uniform Reciprocal Enforcement of Support Action petitions and related documents as directed.

4. Prepare and send forms, form letters, and other correspondence as necessary in the supervision and follow up of failure-to-provide and fraud investigations.

5. Tabulate and prepare statistical reports relating to failure-to-provide and fraud investigations.

6. Take and transcribe dictation of investigators assigned to the Family Support Division and perform all other secretarial duties connected therewith.



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Receptionists

703.30

1. Keep daily appointment book for child support and fraud investigators.
2. Type individual cards for each investigator's appointments the day before and give to file clerk to pull required files.
3. Record in appointment book all trials in proper investigator's column.
4. Forward memos received from Calendar Clerk to investigators, advising date, name, etc., of court and jury trials on day prior to trial.
5. Screen incoming calls and interview people coming into the office for child support matters.
6. Take messages and telephone calls for investigators when not in the office.
7. Know whereabouts of all investigators at all times when they are out of the office.
8. Check district attorney's information form and help complete same, if necessary, before sending people in for interview with investigator.
9. Compile and type monthly reports of number of persons interviewed by each investigator and total same.





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NORTH COUNTY DISTRICT ATTORNEY'S OFFICE 704.00

In that the North County Branch Office of the District Attorney in Palo Alto is of a lesser size than the San Jose Office, the duties of the Legal Stenographer and Intermediate Clerk often overlap. Each is familiar with the other's work and cognizant of office policy and office procedure. In the absence of either one of the office employees, and with a few minor exceptions, office routine should continue uninterrupted and smoothly.

The responsibilities of each employee is as follows:

Legal Stenographer: 704.10

1. Take dictation of orders, motions, search warrants, affidavits, briefs, instructions to the jury, reports, and other legal documents and correspondence.
2. Put general information into proper legal form.
3. Compose legal documents for which general forms are available, such as certifications to Superior Court, witness claims, mileage claims, and various other documents. Keeps a daily listing of all complaints issued and received.
4. Maintains a monthly tally for all complaints issued by North County District Attorney's Office and other departments, amendments and reductions.
5. Maintains running account of all jury lists received, forwarded to San Jose for checking and returned to North County District Attorney's Office.



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6. Supervise and maintain Court Calendar.
7. Order all stock and office supplies.
8. Act as receptionist and answer telephone.

Intermediate Typist Clerk:

704.20

1. Index all complaints.
2. Maintain complaint and card index files.
3. Assist Legal Stenographer in typing various forms  
and complaints.
4. Assist Legal Stenographer in maintaining Court Calendar.
5. Maintain running account of all 23102 VC complaints  
and pending B/A results.
6. Act as receptionist and answer telephone.



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LABORATORY OF CRIMINALISTICS

705.00

The clerical section in the Laboratory of Criminalistics consists of two Intermediate Stenographer Clerks under the supervision of the Director.

Their duties include:

1. Receptionist services.
2. Maintain technical, administration, and case files.
3. Monthly statistical summaries.
4. Purchasing and contracting records.
5. Appointment schedules for technical staff as witnesses for shifting court calendars and coordination with Attorney staff and courts.
6. Stenographer and secretarial services to entire staff.
7. Verify evidence receiving procedure and authenticate blood alcohol chain of possession data.
8. Prepare technical manuscripts.
9. Make studies of technical data and collate technical summaries.
10. Serve as court witnesses when required.
11. Maintain County driver license.
12. Execute details of personnel management records.



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CLERICAL OFFICE PROCEDURE AND POLICY 706.00  
Lunch Hour Duty 706.10

It is required that a stenographer be on duty during the lunch hour in the Legal, Investigative Section, and Branch Office in Palo Alto, to take dictation, answer the phone, or any other duties which may be required.





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Receptionists - Inquiries

706.20

The receptionists, in answering inquiries from the general public, will answer these questions to the best of their ability and knowledge. Should there be any question with reference to giving an exact answer to the public, it is their responsibility to refer these calls to the following parties:

1. Attorneys
2. Criminal Investigators II
3. Administrative Assistant



INDEX 800.00

GENERAL OFFICE POLICIES AND PROCEDURES



800.00  
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INDEX 800.00 - GENERAL OFFICE POLICY

ANNUAL VACATIONS

801.00

An annual vacation sign-up sheet shall be circulated and all personnel shall indicate thereon the expected or planned vacation dates for the forthcoming twelve calendar month period. Vacation dates shall be so arranged as to avoid more than one attorney from any one section of the office being on vacation. In the case of conflicts among personnel as to vacation dates, which cannot be resolved to the mutual satisfaction of all parties, seniority in the office shall automatically prevail. Before going on vacation, all outstanding work shall be assigned or directed to a designated person. This shall include all hearings, meetings, and court appearances of any kind.



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SICK LEAVE

802.00

Any person who will be absent because of illness shall call the office prior to 8:30 a.m. on the day of absence and notify the Administrative Assistant of the illness. In the event the Administrative Assistant is not available to receive the information, notice shall be given to the receptionist, and the latter shall notify the Administrative Assistant. The department head or an assistant shall be notified of all absences on account of sickness.

Unreported or Unapproved Absence

802.10

Any absence not reported or approved by the department head or an assistant shall be automatically charged to vacation time. More than one occurrence of such absence shall be subject to such action as the department head shall decide.

Absence on Business

802.20

All personnel leaving the office for any business reason shall notify the receptionist of the length of time of the absence and the destination.





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DATE August 1, 1965

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OFFICE CONFERENCE

803.00

An office conference will be held each Friday at 8:00 a.m. Each attorney and investigator must attend unless in court, on vacation, sick, or excused from attendance in advance. All office calls, unless of an emergency nature, shall be deferred until the conclusion of the conference.



DEPT. 202 INDEX 804.00

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EMERGENCY TRAVEL

804.00

Request has been granted for the District Attorney Investigators to use County vehicles on official business beyond an 85-mile radius of San Jose without prior travel authorization.

AUTHORIZATION

Authority is hereby granted to the undersigned to

sign claims and contracts on behalf of the

approval of the undersigned.

Louis

John

William

Robert

Ray

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AUTHORIZATION FOR MILEAGE, TRIP, AND BLUE CLAIMS 805.00

Authorization for mileage claims, trip expense claims, and blue claims will have to be submitted by the individual for approval only to the following persons:

Louis P. Bergna

John Schatz, Jr.

William P. Hoffman

Robert L. Webb

Ray C. Mathies

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